

Chapter XI - FAMILY MEDICAL LEAVE OF ABSENCE POLICY

SECTION I GENERAL PROVISIONS

- A. Under the provisions of the Family and Medical Leave Act of 1993 ("FMLA"), any employee who worked¹ at least 1,250 hours in the 12-month period immediately preceding a request for FMLA leave² is entitled to take not more than twelve (12) workweeks of unpaid FMLA leave (26 weeks for Military Caregiver Leave) in a twelve (12) month period (as defined below in paragraph I.B.) for any of the following reasons:
1. The birth of a child of the employee and/or to care for the child (leave must be taken within twelve (12) months of the birth);
 2. The placement with the employee of a child for adoption or foster care and to care for the child (leave must be taken within twelve (12) months of the placement);
 3. To provide care for the employee's spouse, child or parent with a "serious health condition" (as defined by the FMLA and applicable law);
 4. To take leave when the employee is unable to perform any one of the essential functions of the position by reason of his or her own "serious health condition" (as defined by the FMLA and applicable law);
 5. For a qualifying military-related exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending call or order to active duty in support of a contingency operation (as defined by the FMLA and applicable law); or
 6. To provide care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the covered service member ("Military Caregiver Leave").
- B. The 12-Month Period: As stated above, an eligible employee is entitled to a total of twelve (12) workweeks of leave during any twelve (12) month period. That twelve (12) month period is defined as a "rolling" twelve (12) month period backward from the date an employee first uses any FMLA leave. In other words, the number of weeks which an employee has available upon the beginning of a FMLA leave shall be twelve (12) weeks less the number of FMLA leave weeks taken in the twelve (12) month period immediately preceding the beginning of the current FMLA leave (the "Available Leave Weeks").

¹ "Worked" means the employee performed actual work. Worked does not include paid or unpaid time off.

² Accordingly, employees with less than one year of employment with the Town are not eligible for FMLA leave.

In the case of leave taken to care for a covered service member with a serious injury or illness, an employee who does not take all twenty-six (26) workweeks of leave to care for the covered service member during the single 12-month period will forfeit any remaining Military Caregiver Leave.

- C. Leave for Birth, Adoption or Foster Care of a Child: A FMLA leave for the birth or placement for adoption or foster care of a child must be taken all at once unless otherwise agreed to by the Town Manager or his/her designee. Pursuant to 29 USC §2612(e), the employee must give thirty (30) days' notice if the birth or adoption is foreseeable or, if not foreseeable, such notice as is practicable.
- D. Leave Due to a Serious Health Condition: A FMLA leave due to a serious health condition may be taken on an intermittent or reduced leave schedule. To qualify, the employee or family member must have a serious health condition and the intermittent leave or reduced leave schedule must be certified as medically necessary by a health care provider. An employee who takes intermittent leave for planned medical treatment has an obligation to make a reasonable effort to schedule treatment so as not to unduly disrupt the operations of the employee's department and, if leave is for planned medical treatment, to give thirty (30) days' notice or such notice as is practicable. If FMLA leave is requested on an intermittent basis, the Town Manager or his/her designee may require the employee to transfer temporarily to an alternative position which better accommodates intermittent periods of absence or a part-time schedule, provided that the position has equivalent pay and benefits (but the position need not have equivalent duties).
- E. Substitution of Accrued Paid Leave Required: The Town requires the substitution of accrued paid leave for unpaid FMLA leave time (i.e., any time during which the Town does not process any payment to the employee through payroll, hereinafter referred to as "Unpaid FMLA Leave") as follows: Accrued sick (including "family sick" time if applicable) leave, vacation leave (including personal time (if applicable) and floating holiday(s) (if applicable)), in that order, will be substituted for unpaid FMLA leave time. Upon the exhaustion of accrued paid leave, the remainder of any FMLA leave will be unpaid. In no case will the combination of paid and unpaid leave used for a FMLA purpose exceed twelve (12) workweeks (twenty-six (26) workweeks for Military Caregiver Leave) in any twelve (12) month period as defined herein.

Note: In the event an employee on FMLA leave is receiving wage replacement through the Town's Short-Term Disability Policy or through workers' compensation, the employee is not required to use accrued time to make up the difference between the wage replacement amount and the employee's base wages; however, the employee may elect to apply accrued time (in the order set forth above) to make up the difference in pay and should consult with Human Resources with regard to his/her pay options.

- F. Designation of FMLA Leave: When an employee requests any leave of absence which qualifies as leave under the FMLA, it is the Town's responsibility and right to designate such leave as FMLA leave. FMLA leave may be designated upon

request by the employee or when the Town has sufficient information concerning the leave status of an employee to presume either that the employee or his/her family member has a qualifying serious health condition as defined under the FMLA, or that the leave is due to the birth of the employee's child or the placement with the employee of a child for adoption or foster care. The Town's Human Resources Department personnel will request and obtain sufficient information from the employee to determine whether the leave qualifies as FMLA leave, to include a medical certification from the employee's or family member's health care provider. In addition, the Town's Human Resources Department personnel or a physician authorized by the Town may contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification) after the Town has given the employee an opportunity to cure any deficiencies with the certification as set forth in the FMLA regulations. Once the Town has determined the leave qualifies for FMLA leave, the employee will be notified that the leave has been approved for FMLA leave and will be counted towards the employee's FMLA leave entitlement.

- G. Leave for Purposes Not Covered Under FMLA: If an employee requests and is granted authorized leave for a purpose that does not qualify as FMLA leave (e.g., leave to care for a parent-in-law, or a blood relative other than a spouse, child or parent), that leave time will not be charged against the 12-week FMLA entitlement. Thus, the amount of FMLA leave eligible to an employee who takes two weeks of authorized vacation leave to care for a parent-in-law will not be impacted by the vacation leave.

SECTION II STATUS OF INSURANCE BENEFITS WHILE ON FMLA LEAVE

- A. While on FMLA leave, an employee may continue to participate in the Town's group health insurance in the same manner as employees not on FMLA leave. Coverage for Life and Disability Insurance will continue for the duration of the FMLA leave.
- B. In the event of paid FMLA leave (during which the employee is either using accrued leave time and/or receiving some form of wage replacement paid through payroll), the employee's share of any medical or dental insurance premiums will continue to be deducted in the same manner as it would be when the employee is not on FMLA leave.
- In the case of Unpaid FMLA Leave, an employee's share of any medical or dental insurance premiums must be paid in advance by the employee on the first day of each month.
- C. Reinstatement: At the end of an authorized FMLA leave, an employee will be reinstated to his or her previous job or to a position with equivalent pay, benefits and substantially equivalent duties. However, there are some limits of reinstatement. Employees returning from an FMLA leave have no greater rights to

reinstatement or other benefits and conditions of employment than if they had not taken FMLA leave. For example, if an employee's position was affected by a lay-off or reorganization or elimination, the employee may not be eligible for reinstatement. An employee who fails to comply with the Town's requirements for reporting and fitness for duty certification may also be denied reinstatement.

SECTION III BASIC REGULATIONS AND CONDITIONS OF LEAVE

- A. The Town will require medical certification to support a claim for FMLA leave for an employee's own serious health condition or to care for the employee's child, spouse or parent with a serious health condition whenever that leave is expected to extend beyond three (3) calendar days or will involve intermittent or part-time leave. The employee shall have no more than fifteen (15) calendar days to provide the medical certification to the Town.
 - 1. For the employee's own medical leave, the certification must include a statement that the employee is unable to perform an essential function of his or her position.
 - 2. For FMLA leave to care for a seriously ill child, spouse or parent, the certification must include an estimate of the amount of time the employee is needed to provide care.
- B. The Town may require a second medical opinion and periodic recertification at its own expense. If the first and second opinions differ, the Town, at its own expense, may require the binding opinion of a third health care provider, approved jointly by the Town and the employee.

SECTION IV NOTIFICATION AND REPORTING REQUIREMENTS

- A. As set forth above, when the need for FMLA leave is foreseeable, such as the birth or adoption of a child, or planned medical treatment, the employee must provide reasonable prior notice, and make efforts to schedule leave so as not to disrupt Town operations.
- B. In cases of a FMLA leave due to a serious health condition, the employee will be required to report periodically on his or her FMLA leave status and intention to return to work.
- C. At the expiration of any FMLA leave due to the employee's own serious health condition, the employee must present medical certification of fitness for duty **before** returning to work. The Town will require this certification to address whether the employee can perform the essential functions of his/her position.

SECTION V COORDINATION WITH MATERNITY LEAVE

- A. The Town provides female employees with a leave of absence for the period of temporary physical disability resulting from pregnancy, childbirth and related medical conditions (“Maternity Leave”). Although they may run concurrently as set forth below, Maternity Leave is separate from FMLA leave. An employee is eligible for Maternity Leave even if she has worked for the Town for less than twelve (12) months or less than twelve hundred and fifty (1,250) hours in the prior twelve (12) months. A Maternity Leave begins when an employee is medically determined to be disabled and ends when the employee is medically determined to be able to return to work, and is paid in accordance with the provisions of the Town’s Short-Term Disability Policy. If an employee also is eligible for FMLA leave, the employee’s FMLA leave and Maternity Leave will run concurrently. Maternity Leave is not limited by any measure other than the period of disability.
- B. Once an employee has exhausted her paid Maternity Leave, she may take additional FMLA leave to care for the child, assuming she has Available Leave Weeks remaining. However, in no event shall the total FMLA leave for the birth of a child (including the period of Maternity Leave) exceed 12-weeks total in the applicable 12-month period.

**SECTION VI COORDINATION WITH OTHER TOWN POLICIES;
REFERENCE TO FMLA AND FEDERAL REGULATIONS**

- A. In the event of any conflict between this policy and other Town policies, the provisions of this policy shall govern; however, if any provision of a Collective Bargaining Agreement exceeds the benefits offered herein, the Collective Bargaining Agreement shall control for those covered employees.
- B. The FMLA and the FMLA federal regulations issued by the U.S. Department of Labor (the “Federal Authorities”) contain many limitations and qualifications for entitlement and governance of FMLA leave not stated herein.
- C. Unless this Policy plainly states an intention to afford more generous benefits to the employee than the Federal Authorities, the terms of the FMLA and the FMLA federal regulations are incorporated herein and will be applied in all instances of requested or designated FMLA leave. If there is an ambiguity in this Policy, the ambiguity shall be resolved in favor of the construction most consistent with the Federal Authorities.