

## **FAMILY AND MEDICAL LEAVE POLICY**

**Policy No. 49**

It is the policy of the Town of Mashpee to provide leave in accordance with the Family and Medical Leave Act of 1993 (FMLA).

All eligible employees are entitled to take up to twelve (12) workweeks of FMLA leave during a twelve-month period under the following definitions and procedures (26 weeks in connection with military service).

**ELIGIBLE EMPLOYEES:** Individuals who have worked for the Town for at least twelve months and provided at least 1,250 hours of service during the twelve months before the leave commences.

### **ELIGIBLE EMPLOYEES ARE ENTITLED TO FMLA LEAVE FOR:**

1. The birth of a child and to care for the child or the adoption or placement for foster care of a child under 18 (or over 18 if the child has a physical or mental disability and is unable to care for itself).
2. A serious health condition, which prevents the employee from performing the functions of his/her job.
3. To care for a child, parent, or spouse that has a serious health condition.
4. Any qualifying situation requiring immediate aid or action arising out of the fact that a spouse, son, daughter, or parent of the employee is on active duty, or has been notified of impending call to active duty status, in support of a contingency operation.
5. To care for a spouse, son, daughter, parent, or next of kin who is a service member recovering from a serious illness or injury sustained in the line of duty. Employees are entitled to up to twenty-six (26) weeks of leave in a single twelve-month period to care for a service member under the National Defense Authorization Act.

### **DEFINITIONS:**

**CHILD:** Biological, adopted or foster children, stepchildren, or the child of a person with legal guardianship or who has day-to-day responsibility to care for and financially support a child, even if there is no biological or legal relationship.

**HEALTH CARE PROVIDER:** A doctor of medicine or osteopathy authorized to practice medicine or surgery by the State in which the doctor practices; or any other person determined by the Secretary of Labor, to be capable of providing health care services as defined under FMLA regulations.

**INTERMITTENT LEAVE:** Time away from the job taken in separate blocks of time due to a single illness or injury.

**PARENT:** The biological parent, or person who has day-to-day responsibility to care for and financially support a child. Parents-in-law are not included.

**REDUCED LEAVE SCHEDULE:** Reduction in the number of hours per workday or workweek.

**SERIOUS HEALTH CONDITION:** An illness, injury, impairment or physical or mental condition that involves:

1. Treatment as an inpatient in a hospital, hospice or residential medical care facility; or
2. A health condition that requires continuing treatment includes: a) two or more treatments by a health care provider; b) two or more treatments by a health care practitioner on referral from, or under the direction of, a health care provider; c) a single visit to a health care provider that results in a regimen of continuing treatment under the supervision of a health care provider.
3. A health condition that requires continuing treatment by or under the supervision of a health care provider for a chronic or long-term health condition that is incurable or so serious that if left untreated, would likely result in an absence from work of more than three days.

Examples of serious health conditions include: heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, injuries caused by serious accidents on or off the job, the need for prenatal care, childbirth and recovery from childbirth.

**TWELVE-MONTH PERIOD:** The twelve-month period measured forward from the date any employee's first FMLA period begins. For example, an employee takes no leave until March 5 in a particular year. If the employee exhausts his/her twelve weeks by October of that year, then he/she may not take additional leave until the following March 5.

**SPOUSE:** Defined in accordance with applicable State law, including common law marriages as recognized by the Commonwealth of Massachusetts. Unmarried domestic partners do not qualify for FMLA leave to care for their partner.

**CONCURRENT LEAVE:** State and federal mandated leave entitlements normally run concurrently with each other and with leave provisions under any applicable collective bargaining agreement or policy.

## **PROCEDURE**

### **NOTICE OF INTENT TO USE LEAVE:**

Eligible employees will provide written notice of their intent to use FMLA leave to their supervisor, the Town Manager and the Human Resources Director thirty days in advance of when the leave is foreseeable. For example, the birth or placement of a child for adoption or foster care, or planned medical treatment. When unforeseen events occur that require FMLA leave, the employees or a representative of the employee must provide written notice as soon as both possible and practical but in no event later than one or two working days of learning the need for leave except in extraordinary circumstances. The notice will include the reason for the leave, the date the leave shall begin and the intended date of return.

When planning medical treatments, employees should consult with the Town when giving notice and make reasonable efforts to schedule the leave so as not to unduly disrupt the Town's operations.

### **MEDICAL CERTIFICATION:**

Leave to care for an employee's seriously ill family member, or leave due to a serious health condition that makes the employee unable to perform the functions of the employee's job, must be supported by certification by a health care provider. Employees must provide the certification within fifteen calendar days to Human Resources. If the need for leave was not foreseeable, the employee must still provide the certification as soon as possible and practical thereafter. Certification shall include:

1. Identification of the practitioner and the type of medical practice;
2. The date the serious health condition commenced and the probable duration of the condition;
3. Diagnosis of the serious health condition;
4. Statement of the regimen of treatment prescribed for the condition (including estimated number of visits, nature, frequency and duration of treatment, including referred or ordered treatment to other health care providers and whether inpatient hospitalization is re-required). For intermittent leave or leave on a reduced leave schedule, a statement of the medical necessity for such leave is required;
5. In instances of the employee's serious health condition:
  - a. Statement that the employee is unable to perform work of any kind, or
  - b. Statement that employee is unable to perform the essential function of his/her position (as determined by the Town); and
6. Instances of care for a family member:
  - a. Statement that the family member is in need of the employee's assistance for basic medical, hygiene, nutritional needs, safety or transportation, or
  - b. Statement that the employee's presence would be beneficial or desirable for the care of the family member.

Medical certification forms are available in the Human Resources Department. If the Town has reason to doubt the validity of a medical certification, the employee may be required to obtain a second opinion from a health care provider designated by the Town at the Town's expense. If the two opinions differ, the Town may require a third opinion, which will be final and binding, from a health care provider mutually agreed upon and at the Town's expense.

Recertification by the health care provider is required every thirty days. Recertification must include the same information contained in the initial certification.

Recertification may be required more frequently in the following instances:

1. The employee requests an extension of leave;
2. Changed circumstances occur regarding the illness or injury; or
3. The Town's reception of information, which casts doubt upon the continuing validity of the certification (as determined by the Town Manager).

### **NOTICE OF INTENT TO RETURN TO WORK:**

An employee will be required to report periodically to the Town on his or her status and intent to return to work. At least two weeks before returning to work, the employee should notify his/her department head and the Human Resources Director of the date of return. For medical leave that does not exceed 12 weeks (or 26 weeks for Military Family Leave), the Town will re-instate the employee to his/her previous position, previous pay, and length of service credit, as of the date of the beginning of the medical leave. For a medical leave that exceeds 12 weeks (or 26 weeks for Military Family Leave), the Town will reinstate the employee in the first available opening for which he/she is qualified.

### **INTERMITTENT LEAVE/REDUCED SCHEDULE:**

The Intermittent Leave Rule – when a serious medical condition of the employee or immediate family member is the reason for the leave, an employee has the right to request intermittent leave. Intermittent leave can include partial day absences from work, reduced leave schedules, or absences from the work station in small increments of time. When intermittent leave involves the serious medical condition of an immediate family member, the employee may even request leave in short intervals of time to drive the family member to the doctor. If the FMLA's requirements are met, the employer must honor such requests for intermittent leave. Nevertheless, when an employee contemplates intermittent leave, he or she must attempt to schedule that leave without disrupting business operations whenever possible.

Requests for intermittent leave in connection with the birth of a child, an adoption or foster care, however, is not mandatory under the Act. The Town may allow intermittent leave for such absences, but is not required. In that instance, the employer can inform the employee that leave must be taken in blocks of time, but may not be taken in small increments. When an intermittent leave request is granted for any reason it is always important to track carefully the amount of incremental leave taken toward the maximum amount of leave permitted.

## **PAID LEAVE AND BENEFITS:**

In all circumstances, accrued vacation and personal leave as well as compensatory time must be used for qualified FMLA leave. In addition, sick leave must also be used to care for the employee's own serious health condition. Upon depletion of the available accrued paid leave, FMLA leave becomes unpaid leave. It is the total of this time, which will equal the twelve weeks of FMLA leave. During any portion of FMLA leave to which the accrued paid leave is applied, the employee will continue benefits and seniority. During any portion of FMLA leave which is unpaid, the employee will not accrue benefits and seniority.

The Town will continue the contribution to the employee's group health plan during the FMLA leave unless the employee advises that he/she will not be returning to work. The employee will have his/her contribution deducted from the applied paid leave. Upon the depletion of said leave, the employee must make arrangements to pay his/her contribution to the health premiums. These arrangements must be made in advance of the leave, especially if the leave is foreseeable.

If the employee's premium payment is more than 30 days late, the Town's obligation to maintain health benefits ceases at the discretion of the employer. Employees experiencing severe financial hardship may petition the Town Manager for consideration of alternatives for payment of the employee premium. This may include but not be limited to: payment of the employee health insurance by the Town while on unpaid leave and subsequent double deductions of health insurance premiums upon the employee's return to work. This petition must be made within the thirty days noted previously. The Town Manager will make the final determination.

The Town will recover from the employee premiums paid during any period of unpaid FMLA leave if the employee fails to return to work after the FMLA leave entitlement has expired, except in instances of continuation, reoccurrence, or onset of qualifying FMLA leave circumstances or other circumstances beyond the control of the employee.

## **RESTORATION TO POSITION:**

An eligible employee who takes FMLA leave is entitled to be restored to the same position that the employee held when the leave started, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

The Town may deny restoration to a key employee (one who is salaried and among the highest paid 10% of employees) if it is necessary to prevent substantial and grievous economic injury to the operations of the Town. Upon requesting family leave, the employee will be notified by the Town of his/her status as a key employee.

Employees on FMLA leave due to their own serious health condition must submit certification from the health care provider that the employee is able to resume work, i.e. is fit for duty, before they can return to work.

**DENIAL:**

Conditions under which FMLA leave and/or reinstatement may be denied including (but not limited to):

1. Ineligibility of employee;
2. Unqualified for leave under the Family and Medical Leave Act;
3. Employee fails to give timely advance notice for foreseeable leave (temporary denial up to thirty days after employee provides notice of need);
4. Employee fails to provide in a timely manner, requested medical certification (temporary denial up to time of submittal);
5. Employee fails to supply fitness-for-duty certificate (up to time of submittal);
6. Employee would not otherwise have been employed if leave had not been taken;
7. Employee unequivocally advises Town of intent not to return to work;
8. "key" employee status;
9. Fraudulent acquisition of FMLA leave; or
10. Employment with another employer while on FMLA leave.

**CONCURRENT LEAVE:**

State and federal mandated leave entitlements normally run concurrently with each other and with leave provisions under any applicable collective bargaining agreement or policy.

All notifications, certifications, and questions relating to this policy must be submitted to the Human Resources Director.

Adopted by Board of Selectmen 10/16/95

Amendment Effective Date 01/16/09

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