

Section 17. Family and Medical Leave – Revised and Approved by Town Council January 14, 2014

The purpose of this policy is to ensure family and medical leave is provided in compliance with the Family and Medical Leave Act (FMLA), which entitles eligible employees up to 12 weeks of unpaid leave in a 12-month period for certain family and health condition reasons, with pre-existing health insurance coverage being maintained during the leave and reinstatement to the same or an equivalent position when the leave is concluded.

This policy applies to 'eligible employees' as defined by the FMLA: An employee who has been employed with the Town for at least 12 months (not necessarily consecutive) and who has worked a minimum of 1,250 hours during the 12-month period immediately preceding the start of the leave.

Employees are entitled to take FMLA Leave for the following reasons:

- a. To care for the employee's child after birth or placement for adoption or foster care, within 12 months of the birth or placement;
- b. To care for the employee's spouse, child or parent who has a serious health condition;
- c. To take medical leave when the employee is unable to work because of a serious health condition;
- d. Due to 'any qualifying exigency' arising out of the fact that the employee's spouse, parent or child is on active duty military duty or has been notified of an impending call to active duty status in support of a contingency operation.
- e. To care for the employee's spouse, parent or child who is a covered service member and is recovering from a serious illness or injury sustained in the line of duty (Up to 26 weeks in a single 12-month period is allowed for this reason).

Under the FMLA, eligible employees are entitled to up to 12 workweeks of unpaid leave. This policy gives eligible employees the option of using paid personal or sick leave, as appropriate, as well as unpaid leave, against the FMLA entitlement. Any use of leave as FMLA-designated leave, paid or unpaid, within the applicable 12-month period shall be deducted from the employee's FMLA Leave entitlement. The method used in determining the 12-month period in which the employee is entitled to this leave is the "rolling year" measured backward from the date an employee uses any FMLA leave. The remaining leave entitlement would be any balance of the 12 weeks that has not been used during the immediately preceding 12 months.

Sick leave taken on an FMLA basis must be for the employee's own disability due to a serious health condition or to care for the employee's spouse, child or parent who has a serious health condition. Vacation leave or unpaid leave may be used for any of the 'qualifying reasons' listed above.

Any Workers' Compensation-related leave designated as FMLA leave within the applicable 12-month period shall be deducted from the FMLA leave entitlement.

A husband and wife who are both Town employees and eligible for FMLA leave are limited to a combined total of 12 workweeks of FMLA leave during the applicable 12-month period for the birth or

placement of a child for adoption or foster care, the care of the child after birth or placement, or for the care of a parent with a serious health condition. Any period of disability before or after the birth of a child would not be subject to the combined limit.

FMLA leave does not have to be taken as continuous 12-week leave. An employee may request intermittent time off or a reduced work schedule in cases of a serious health condition of the employee or immediate family member, when medically necessary. Leave for the birth, adoption or foster care of a child does not qualify for an intermittent or reduced schedule leave.

Intermittent leave is taken in separate blocks of time because of a single illness or injury and may include leave for periods from an hour or more to several weeks. Examples of intermittent leave include leave taken on an occasional basis for medical appointments or leave taken several days at a time spread over a period of months, such as for chemotherapy. A reduced work schedule leave is a leave schedule that reduces an employee's usual number of hours per work week or work day, generally from full-time to part-time. In those situations where intermittent leave or a reduced work schedule leave is approved, the hours missed from the employee's usual work week will be charged against the FMLA 12-week entitlement on a pro-rata basis. Intermittent leave example: If an employee who normally works five days a week takes off one day, the employee would have used 1/5th of a week of FMLA leave. Reduced work schedule examples: An employee who works half-days on a reduced schedule will have used ½ of a FMLA leave week; an employee who normally works 30 hours/week, but works a reduced schedule of 20 hours/week will have used 1/3rd of a FMLA week.

After consultation with the Human Resources Director or designee, a department head may temporarily reassign and employee on an intermittent or reduced work schedule leave to an alternative position which better accommodates the recurring periods of leave.

The Town may discipline or dismiss an employee on an intermittent or reduced work schedule leave for poor performance or for excessive absenteeism unrelated to the basis for the FMLA leave.

A reduced work schedule which does not make use of any paid leave to make up the difference between the regular schedule and the temporary reduced work schedule may result in a pro-rata reduction in the employee's paid leave accrual and benefits.

Exempt employees who use unpaid FMLA leave on an intermittent or reduced work schedule basis will have their salary reduced according to the hours of leave without pay used, without compromising their exempt status under the Fair Labor Standards Act.

Employees may retain coverage under the Town's group health and dental insurance plan for the duration of the FMLA leave. The Town will continue to pay the employer portion of these insurance premiums. Employees using paid FMLA leave will continue to have their portion of the insurance premiums payroll-deducted. Employees using unpaid FMLA leave are responsible for the payment of the employee portion of the insurance premiums under the conditions which apply to employees in other types of leave without pay.

Disability insurance premiums under the Town's group long-term disability plan shall be maintained by the Town for employees on unpaid FMLA leave under the same conditions as exist for employees on other unpaid leave.

Continuation of retirement contributions is not mandated by the FMLA. All terms and conditions relevant to participation in the retirement system shall be in accordance with the rules established by the N.C. Local Government Employee's Retirement System or the N.C. Law Enforcement Officer's Retirement Fund.

Continuation of employee financed elective insurance benefits shall be pursuant to agreements between the employee and the respective benefit provider.

Vacation and sick leave accruals and retirement service credit will continue during any period of paid leave. However, no leave or retirement service credit will accrue during any period of leave without pay.

Employees returning to work at the conclusion of FMLA leave will be restored to their former position, or one with similar pay, benefits and terms and conditions of employment they enjoyed prior to the FMLA leave.

If there are reductions in force while the employee is on FMLA leave, and the employee would have lost his/her position if not on leave, except as provided under the reduction in force policy, there is no obligation to restore the employee to his/her former or equivalent position.

Regardless of the reason for the FMLA leave or whether leave is paid or unpaid, the employee is responsible for properly requesting and using FMLA leave as follows:

- a. Inform supervisor as soon as practicable of intent to use FMLA leave.
- b. Discuss plans with supervisor to assure department operations are not unduly disrupted, if possible.
- c. Provide information about the reasons for paid leave (including vacation leave) which is sufficient for a determination of whether the paid leave would qualify as a deduction against the 12-week entitlement under FMLA.
- d. Submit a request in writing to supervisor as soon as practicable before taking the leave, considering the facts of the case.
- e. Provide appropriate medical certification (or legal certification of adoption or foster care placement) as soon as practicable before taking the leave, considering the facts of the case, but no longer than 15 days after receipt of FMLA leave information packet.
- f. Continue to timely pay premiums on health and dental insurance and optional benefits programs, if continued coverage during the leave is desired.
- g. Provide periodic reports to Human Resources, as instructed, regarding intent to return to work.
- h. Provide reasonable notice of a need to extend FMLA leave beyond the planned conclusion of such leave.

- i. Provide a fitness for duty certification prior to return to work, including limitations, if any, as required.

Leave Request Notice: It is expected that requests for leave are made will in advance of the leave; however, it is understood there will be some cases in which the request cannot be made in advance. Whether proper notice has been given will be decided on a case-by-case basis, following notice requirements prescribed in the FMLA. If the employee fails to give proper notice and has no reasonable excuse, the Town may delay the leave. If the employee fails to provide notice that the leave was for FMLA reasons and to present medical certification to that effect within the prescribed time period, the employee may not be entitled to the protections of the FMLA and may be subject to disciplinary actions.

It is the Town's responsibility to designate leave as FMLA leave. This obligation supersedes and employee's desire to use his or her FMLA entitlement. The key to designating FMLA leave is the qualifying reason(s), not the employee's decision or reluctance to use FMLA leave. The designation must be based on information obtained from the employee or an employee's representative. FMLA leave designation is a responsibility shared between the employee's department and the Human Resource Department as follows:

The supervisor/department director has the responsibility for the following:

- a. Receive notice of the employee's intent to use FMLA leave.
- b. Absent notice of intent, when an employee is on paid leave, after a period of three workdays, require the employee to provide sufficient information to establish whether the leave is for a FMLA qualified reason (unless the absence is known to be for a non-FMLA qualifying reason e.g. vacation).
- c. Consult immediately with the Human Resource Department about the application of the FMLA to the circumstances presented.
- d. Upon receipt of the employee's notice, give the employee the appropriate leave request forms and notice documents, with the instruction to timely return completed forms.
- e. Clearly communicate to the employee what the department's expectations are for the employee continuing to contact or keep management informed on intent to return to work.
- f. Keep the Human Resource Department informed of any developments.
- g. Design intermittent or reduced work schedules if requested by the employee and if feasible.
- h. Work with the employee upon reinstatement to facilitate a smooth transition back into the work environment.

The Human Resource Department has responsibility for the following:

- a. Receive notice of intent or leave request, medical certification and supporting documentation.
- b. Absent notice of intent, review time and attendance reports to identify potential FMLA situations and make contact with department representative for follow-up.
- c. Designate leave as FMLA leave once it is confirmed that the leave is being taken for qualifying FMLA reason and give the written notice of designation to employee in accordance with the FMLA deadlines for such notice.

- d. Notify, or ensure supervisor/department director notifies employee of specific rights, including those relating to the continuation of benefits and reinstatement, as well as employee obligations and the consequences of a failure to meet these obligations.
- e. Advise supervisor/department director on the application of FMLA regulations to the employee's situation.
- f. Maintain records of FMLA usage and remaining entitlement.
- g. Assist supervisor/department director on arrangements for intermittent or reduced schedule leave, when required.
- h. Maintain in various locations throughout the Town buildings and organization postings about the FMLA.
- i. Maintain all records related to the employee's leave under FMLA. (keeping all medical documentation separate from the employee's personnel file.)
- j. Notify the employee, facing cancellation of insurance coverage in writing at least 15 days before coverage is to cease.

Where leave must begin prior to the confirmation of an FMLA qualifying event, the leave will be provisionally designated and so communicated to the employee in writing. Upon receipt of the requested information or medical certification which confirms that the leave either is or is not for an FMLA reason, the provisional designation will either be withdrawn or made final by providing written notice to the employee.

FMLA leave can be designated retroactively in only two (2) instances: If the employee was absent for an FMLA reason and the supervisor did not learn of it until after the employee's return to work, provided the employee so notifies the supervisor within two working days of the return to work, or if the supervisor has been provided information concerning the reason for the leave, but has been unable to confirm FMLA entitlement, provided a provisional designation of FMLA qualification has been communicated to the employee.

For leave related to serious health conditions or child birth, the employee is required to provide medical certification(s) from the employee's or family member's qualified health care provider.

"Qualified Health Care Provider" may be any licensed physician, dentist, podiatrist, clinical psychologist or optometrist authorized to practice in North Carolina. In some cases, other health care providers may be recognized for the purpose of awarding leave under the FMLA.

The Town may require a second medical opinion at the Town's expense. In the case of conflicting opinions, the opinion of a third health care provider, agreed upon by both the employee and the Human Resource Director or his designee and paid by the Town, shall be final.

For some job classifications, the Town may require the employee to obtain a fitness-for-duty certification from the health care provider, at the employee's expense. If an employee fails to provide such a certification, reinstatement will be delayed until the employee complies. If the certification is not submitted within 15 calendar days of the request, where practicable, reinstatement may be denied. The

Town reserves the right to have the employee examined by another health care provider, at the Town's expense.

The employee must make reasonable efforts to schedule any medical treatments so as to not unduly disrupt the operations of the employee's department or work unit. During the course of the treatment and as the Human Resource Director or designee deems appropriate, the employee may be required to provide certification from the appropriate health care provider of the unavailability of treatment during non-work time, or at times that are less disruptive to the operations of the employee's unit.

The Town may require an employee to certify the family relationship if the need for leave is pursuant to the adoption, foster care placement, or birth of a child or to care for the employee's parent.

The Human Resource Director or designee shall review, investigate and resolve suspected cases of bad faith, fraud or abuse of the FMLA leave program. Abuses of the FMLA leave program may result in, but are not limited to, revocation of the leave, refusal to restore the employee to his/her job; recover of Town costs for paid leave and insurance benefits, and disciplinary action up to and including dismissal.

Outside employment while on FMLA leave will be treated the same as when an employee is discovered to have outside employment while on any other paid or unpaid leave.

Employees may extend the return from FMLA leave to the extent they have FMLA leave entitlement available. A request for an extension must be accompanied by new appropriate medical or legal certification.

An employee who will not be returning to work at the conclusion of FMLA leave must notify the supervisor in writing as soon as practicable. In the absence of written notification, failure to return from leave shall be interpreted as a resignation.

If applicable, any benefit entitlements based upon length of service shall be calculated as of the employee's last paid day. Town costs of any payments made to maintain the employee's health, dental, or disability benefit coverage while on un-paid FMLA leave shall be recovered if an employee fails to return to work at the end of his/her approved FMLA leave, or at the end of approved medical leave without pay under the Town's leave without pay policy, whichever is later, unless the reason the employee does not return to work is due to the serious health condition of the employee or a family member or other circumstances beyond the employee's control. The Human Resource Director or designee may request certification of the reason for the employee's failure to return to work.