TOWN of GREENFIELD
FAMILY and MEDICAL LEAVE POLICY
POLICY AND PROCEDURES

POLICY

It is the policy of the Town of Greenfield to comply with the provisions of the Federal Family Medical Leave Act (FMLA). These laws entitle eligible employees to take unpaid, job-protected leave for specified family and medical reasons. In the event of any conflict between the policy and the applicable law, employees will be afforded all rights required by law.

This policy integrates with and is included with paid leave policies as provided for by collective bargaining unit contracts. Additionally, this policy runs concurrently with and is integrated as provided for in the Massachusetts Maternity Leave Act, MGL Chapter 149, Sec. 105D; and with the Massachusetts Small Necessities Act as provided for in MGL Chapter 149, Sec. 52D.

Leave qualifying as FMLA leave may either be requested by the employee or will be designated as FMLA leave by the Town when it appears that the reason for the leave fits the FMLA definitions.

QUALIFYING EVENTS

The law provides for six (6) circumstances under which an eligible employee is entitled to unpaid, job-protected leave from work:

1. Birth of a child of the employee and to care for the child;
2. Placement of a child with the employee for adoption or foster care and to care for that newly placed child;
3. The employee is needed to care for a covered family member with a serious health condition;
4. The employee's own serious health condition that makes the employee unable to perform the functions of his/her position;
5. A qualifying exigency (need) arising out of the fact that the employee's spouse, son, daughter, or parent is (1) an active duty service member, or (2) covered military member of the National Guard and Reserves on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation;
6. Military caregiver leave (i.e., covered service member leave) to care for (1) a service member with a serious injury or illness incurred in the line of duty on active duty, or (2) a veteran undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment. Eligible employees who are the spouse, son, daughter, parent, next of kin (closest blood relative), are entitled to a special leave entitlement of up to 26 weeks to care for a covered service member during a single 12 month period.

In addition to and in compliance with the Massachusetts Small Necessities Leave Act employees are entitled to 24 hours of unpaid leave time in addition to any FMLA leave. Employees may apply for leave under this Act for the following:

1. School activity involving the educational advancement of the employee's child, such as parent-teacher conferences or interviewing for a new school;
2. To accompany the employee's child to a routine medical or dental appointment, such as check-ups or vaccinations; and
3. To accompany the employee's elderly parent (60 or older and related by blood or marriage) to routine medical or dental appointments; or, for appointments for other professional services related to the elder's care such as interviewing at nursing or group homes.

All eligible employees are entitled to take up to twelve (12) weeks of unpaid Family and Medical Leave (or up to 26 weeks of military caregiver leave) during a twelve (12) month period under the following definitions and procedures.

For part-time employees and those who work variable hours, the family and medical leave entitlement is calculated on a pro rata basis. A weekly average of the hours worked over the 12 weeks prior to the beginning of the leave should be used for calculating the employee's normal workweek.

DEFINITIONS

a. ELIGIBLE EMPLOYEES: an employee who has worked for the Town for at least twelve months (consecutive or non-consecutive, provided that the break in services does not exceed seven years unless due to due to National Guard or Reserve military service obligations), and have actually worked 1,250 hours (not including paid time off) during the 12 month period immediately before the date when the leave is requested to commence.

b. COVERED FAMILY MEMBER: Employee's lawful spouse, child or parent, or in the case of military caregiver leave also next of kin. Child is defined as son or daughter under 18 years of age, or 18 years of age or older who is incapable of self-care because of mental or physical disability and the employee has responsibility for the actual day-to-day care, including a biological, adopted, foster or stepchild.

c. COVERED SERVICE MEMBER: A current member of the armed forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. May also include veterans undergoing medical treatment, recuperation or therapy for a serious injury or illness that occurred any time during the five years preceding the date of treatment.

The term "active duty" means duty under a call or order to active duty members of the uniformed services; a "contingency operation" is an action or operation against an opposing military force, both as described in 10 U.S.C. s.101(a)(13)(B).

d. LIMITATION: Entitlement to leave for the birth or placement of a child, or to care for a sick parent (but not a parent 'in-law'), expires at the end of the 12 month period beginning on the date of such birth or placement or care. Under federal law, if both spouses work for the same employer they are entitled, if otherwise eligible, to a combined total of 12 weeks of leave (or 26 weeks for military caregiver leave) during any 12 month period. This rule applies only if the couple is married (29 USC s. 2612). FMLA leave runs concurrent with any other leave an employee may qualify for because of the same condition or event.

e. TWELVE-MONTH PERIOD: a "rolling" period measured backward from the date an employee uses any family medical leave.

f. SERIOUS HEALTH CONDITION: an illness, injury, impairment or physical or mental condition that involves:

1. Incapacity or treatment as an in-patient in a hospital, hospice, or residential medical care facility; or
2. Incapacity caused by a health condition requiring absence from work, school, or other regular daily activities for more than three calendar days and requiring two visits to a health care provider, with the first visit within 7 days of the onset and a second visit within 30 days of the incapacity; or
3. Incapacity or continuing treatment by a health care provider for a chronic or long-term health condition (e.g. asthma, diabetes, epilepsy) requiring periodic health care visits for treatment (at least twice a year).
4. Incapacity due to pregnancy or prenatal care.
5. Incapacity that is permanent or long term due to a condition for which treatment may not be effective (e.g. Alzheimer's, stroke, terminal diseases).
6. Absences to receive multiple treatments for a condition that likely would result in an incapacity of more than three consecutive days if left untreated (e.g., PT, chemotherapy, dialysis).

g. QUALIFYING EXIGENCY: Must be one of the following a) short-notice deployment, b) military events and activities, c) child care and school activities, d) financial and legal arrangements, e) counseling, f) rest and recuperation, g) post-deployment activities, h) additional activities that arise out of active duty, provided that the employer and the employee agree, including agreement on timing and duration of the leave.

The leave may commence as soon as the individual receives the call-up notice (son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to a minor). This type of leave would be counted toward the employee's 12 week maximum of FMLA leave in a 12 month period.

h. HEALTH CARE PROVIDER: A doctor of medicine or osteopathy authorized to practice within the located state, or any person determined by the Secretary of Labor, or others capable of providing health care services as defined by Department of Labor Family and Medical Leave Act.

i. REGULAR LEAVE: A continuous uninterrupted block of time away from the job.

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

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

DEFINITIONS FOR MASSACHUSETTS PARENTAL LEAVE ACT

For full policy please refer to the Town of Greenfield's Parental Leave Policy. In summary, requirements are:

a. ELIGIBLE EMPLOYEE: A full time employee who has worked for at least three (3) consecutive months.

b. QUALIFYING EVENT: Leave is for the purpose of giving birth or adopting a child; the placement of a child under 18 years old; the placement of a child pursuant to a court order; the placement of a person under 23 years old who is mentally or physically disabled.

c. NOTICE: The employee must give two weeks' notice of her anticipated date of departure and of intent to return.

d. DURATION: Eight (8) weeks of leave for eligible events.

e. JOB and BENEFITS PROTECTION: Same as under FMLA

PROCEDURES

NOTICE

Eligible employees are required to give at least **30 days notice** of their intent to use family medical leave when the leave is foreseeable. A Request for FMLA should be completed and returned to the Human Resources Department (Form A). In unexpected or unforeseeable situations, the employee must provide notice as soon as practicable. This would ordinarily mean at least verbal notification within one or two business days of when the need for leave becomes known followed by a Request form.

In cases of leave under the service member leave section of this policy when it is foreseeable, the employee shall provide such notice as is reasonable and practicable.

Requesting and being approved for an intermittent FMLA leave does not relieve the employee from appropriately requesting time off or notification in advance for the need to take specific time off work.

Employees will be sent a Notice of Eligibility and Rights & Responsibilities (Form B) after HR

has received an employee Leave Request, or an employee as been placed on Leave, pending receipt of medical certification. Within five business days after the employee has provided the required medical certification, the employee will be provided with a Designation Notice (Form G).

If the need is foreseeable for Small Necessities Leave, seven (7) days notice must be given to your supervisor. If the need is not foreseeable, an employee should notify the employer as soon as is practicable.

MEDICAL CERTIFICATIONS

Leave for serious medical conditions must be supported by certification from a health care provider. All documentation related to the employee's or family member's medical condition will be held in strict confidence and maintained separate from the employee's personnel file. Certification **must be received within 15 days** of the request (or an employee must provide a reasonable explanation for the delay as to when it may be expected):

A. For leaves taken because of an employee's serious health condition, the employee must submit a completed Certification of Health Care Provide for Employee's Serious Health Condition (Form C). An employee must submit a Fitness for Duty Certification report to return to work. (Form H)

B. For leaves taken because of a serious health condition of a covered family member, the employee must submit a completed Certification of Health Care Provider for Family Member's Serious Health Condition (Form D), including verification that the member is a covered family member and the employee's presence is necessary or would be best for the family member's care.

C. For leaves taken because of qualifying exigency for military family leave, the employee must submit a completed Certification of Qualifying Exigency for Military Family Leave (Form E).

D. For leaves taken because of serious injury or illness of covered service member for Military Family Leave, the employee must submit a completed Certification for Serious Injury or Illness of Covered Service member (Form F).

The Town may directly contact the employee's or family member's health care provider, when an employee authorizes, for verification or clarification purposes when necessary by a health care official, a HR professional or management official pursuant to the Act.

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 from a health care provider mutually agreed to and at the Town's expense, which will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

Recertification by the health care provider may be required every thirty days. Recertification must include the employee's explicit intent to return to work and a probable date of return.

Reasons for recertification may include:

1. The employee requests an extension of leave.
2. Significant changes occur from the original certification circumstances.
3. The Town's reception of information which casts doubts upon the continuing validity of the certification.
4. The inability of the employee to return from leave because of the continuation, reoccurrence, or onset of a serious health condition.

In utilizing Small Necessities Leave time certification of the qualifying event may be required.

INTERMITTENT LEAVE OR REDUCED WORK SCHEDULE

Serious health condition (employee or family member) leave may be taken intermittently (e.g., a few days or a few hours at a time) or on a reduced schedule (e.g., ½ days) when medically necessary. Medically necessary means there must be a medical need for the leave and the leave can best be accomplished through an intermittent or reduced leave schedule.

Employees requesting intermittent or reduced schedule family medical leave must make a reasonable effort to schedule treatment so as not to disrupt the Town's operations and administration. The Town may require a temporary transfer to an alternative position with equivalent pay to better accommodate the intermittent or reduced schedule. In no case will the increment of leave be less than one hour.

For the birth, adoption or foster care of a child, the Town and the employee must mutually agree to the schedule before the employee takes the leave; and, must be taken within one year of the birth or placement of the child.

SUBSTITUTION OF PAID LEAVE

In all circumstances, family medical leave is unpaid leave in the first instance (although you may be eligible for workers' compensation benefits). Paid leave may be substituted for unpaid family medical leave as provided for below; however, upon depletion of any available accrued paid leave, the family medical leave becomes unpaid leave. The substitution of paid leave time for unpaid leave time does not extend the twelve (12) week leave period as family medical leave runs concurrently with other types of leave. Further, in no case can the substitution of paid leave time for unpaid leave time result in your receiving more than 100 percent of your regular wages.

1. If you request and are granted leave because of the birth, adoption, or foster care placement of a child; any accrued sick, vacation, personal leave, and compensatory time may first be substituted for unpaid family/medical leave. Thereafter, the remaining family medical leave becomes unpaid leave.

2. If you request and are granted leave because of your own serious health condition, or to care for a covered family member, any accrued sick leave may first be substituted for unpaid family/medical leave. In the event sick leave accrual totals less than the twelve (12) week leave period, then personal, vacation and compensatory leave may be substituted for unpaid leave. Thereafter, any remaining family medical leave becomes unpaid leave.

3. If you request and are granted leave for a covered service member with a serious injury or illness, any accrued sick leave may be first be substituted for up to twelve (12) weeks; thereafter then personal, vacation and compensatory leave may be substituted for unpaid leave. Thereafter, any remaining family medical leave becomes unpaid for any portion of the 26 week period remaining.

4. If you request and are granted leave because of a qualified exigency, only vacation, personal or compensatory time may be used; thereafter any remaining leave becomes unpaid.

5. If you request Small Necessities leave to participate in school activities of your child, any accrued paid vacation, personal leave, and compensatory time may first be substituted for unpaid leave. In the event these leave accruals total less than 24 hours, the remaining leave becomes unpaid leave. If you request Small Necessities leave to accompany your child or elder parent to medical or dental appointments, paid accrued sick leave may be substituted for unpaid leave up to a total of 24 hours. In the event sick leave accrual totals less than the 24 hours, then personal, vacation and compensatory leave may be substituted for unpaid leave. Thereafter, any remaining Small Necessities leave becomes unpaid leave. In general, Personal Leave under any union contract is considered to be equivalent to and satisfies the Small Necessities Act.

EFFECT ON BENEFITS

A. During any portion of the family medical or small necessities leave that is unpaid or to which the accrued paid leave is applied, the employee will continue to accrue benefits and seniority.

B. The Town will continue the contribution to the employee's group insurance health and life plans during the family medical leave under the same conditions as if the employee had continued to work. The employee will have his/her contribution deducted from the applied paid leave as a regular payroll deduction. Upon the depletion of said paid leave, the employee must make arrangements to pay his/her contribution to the health premiums. Employee contribution rates are subject to changes in rates that occur while the employee is on leave.

C. If the employee fails to make his/her premium payment within 30 days of the depletion of available paid leave, the Town will cease the maintenance of insurance coverage. The Town will recover from the employee premiums paid during any period of unpaid family medical leave if the employee fails to return to work after the family medical leave entitlement has expired, except in the instance of continuation, reoccurrence, or onset of qualifying family medical leave circumstances or other circumstances beyond the control of the employee.

RESTORATION TO POSITION

Employees on family medical 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.

On return from family medical leave, the employee will be returned to the same or an equivalent position (equivalent benefits, pay, status and authority). The employee has no "right" to be returned to the same position. 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. The Town will notify Key employees of this status as soon as practicable, and the Town will notify said employees if restoration is denied.

If an employee works at another job during the leave without prior written approval by the Town, the Town will assume that the employee has resigned his or her position and may terminate the employee's employment. Similarly, if an employee fails to return from a leave on the agreed upon date, except for reasons beyond his or her control, the Town will assume that the employee resigned (terminated), unless the leave can be extended under some other statute or town policy.

The employee's restoration rights are the same as they would have been had the employee not been on leave. If an employee's position would have been eliminated or the employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from leave.

DENIAL OF LEAVE

Conditions under which family medical leave and/or reinstatement may be denied include (but are not limited to):

1. Ineligibility of employee.
2. Unqualified leave under the Family Medical Leave Act.
3. Employee fails to give timely advance notice for foreseeable leave (temporary denial up to 30 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 family medical leave.
10. Employment with another employer while on family medical leave.

To the extent that any state law or collective bargaining agreement contains leave requirements which differ in any way from those stated in this policy, the Town will satisfy the federal, state or contract requirements.

All notifications, certifications, and questions must be submitted to the Human Resources Department. Interpretation and determination will be based on the Department of Labor Family Medical Leave Act Rules and Regulations regarding federal Family and Medical Leave (29CFR Part 825); Massachusetts maternity leave (MGL Chapter 149, section 105D); and Massachusetts Small Necessities Act (MGL Chapter 149, section 52D).

Approved:

William Martin
Mayor

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