## 5.13 FAMILY AND MEDICAL LEAVE AND EXTENSION OF LEAVE

The Family Medical Leave Act (FMLA) applies to individuals employed 12 months or longer who have worked 1,250 hours or more in the preceding 12 months, both prior to commencement of leave. Paid leave does not qualify as hours worked toward the 1,250 hours.

Employees who meet the length of service and hours worked requirements described above have rights under FMLA. As a general rule, employees must request leaves of absence under this law and policy, but in appropriate situations, employees may be placed on leave status without application.

The Town uses a rolling 12-month period in order to determine eligibility for leave on any given date. The 12-month period is measured backward from the date employees wish to use Family Medical Leave (FML). Each time employees want to use FML, the Town will look backward in time to determine how much FML they used during the preceding 12 months.

Reasons for Leave of Absence

Medical and Family Leave: Eligible employees may be entitled to a leave of absence under this law and policy if a serious health condition, including disability resulting from an on-the-job injury, prevents them from being able to perform their job; if their spouse, child, or parent has a serious health condition and they must be absent from work in order to care for that relative; or to care for a natural child, adopted child, or formally placed foster child, provided that entitlement to leave to care for a child who is newly-born or newly-received in their household will end 12 months after a natural child is born or 12 months after an adopted or foster child is received in their household.

Military Caregiver Leave: Eligible employees whose spouse, parent, child, or next-of-kin is a covered service member of the Armed Forces may be entitled to a leave of absence to care for the service member if s/he is injured while on covered active duty.

Qualifying Military Exigency Leave: This leave is not available to all military families. Qualifying exigency leave was enacted to assist families of members of the National Guard and Reserves (and certain retired members of the Armed Forces) who face unexpected disruptions to family life. Families of regular Armed Forces and those serving in the National Guard under orders from the state governor are not eligible for qualifying exigency leave. This leave is only provided because of a federal call to duty or a state call under order of the President.

Proof of need for leave of absence will be required regardless of the type of leave taken.

Length of Leave

Medical and Family Leave: Eligible employees may take the equivalent of a total of 12 work weeks of leave during any 12 consecutive months for their own serious health condition, that of a parent, spouse or child, or to care for a newly-born or newly-received child. Leave to bond and care for a newly-born or newly-received child must be taken consecutively; intermittent leave is not available. Leave required because of an employee’s own serious health condition or that of a spouse, child, or parent may be taken intermittently or by means of a modified work schedule when necessary.

Military Caregiver Leave: Leave to care for an injured service member may be taken for up to 26 work weeks in a single 12-month period. Any leave taken by employees for any other FMLA-qualifying reason will count against the 26 weeks of leave permitted to care for an injured service member.

Qualifying Military Exigency Leave: Leave taken because of a qualifying exigency is available for up to 12 work weeks in any 12 consecutive months.

Coordination of Leave and Paid Time Off

Employees on FML, whether for themselves or a family member, will be paid for time absent from work with earned sick leave until it is exhausted; then all SMAX hours (if applicable); then any and all other paid leave available (in any order); then unpaid leave. Leave taken under this policy counts toward the 12 weeks of leave (or 26 weeks, where appropriate), regardless of whether all or part of the absence is paid.

Effect of Leave on Fringe Benefits and Accruals

Benefit Plans: Employees taking leave under this policy must continue to pay their portion of benefit premiums on the same date that the premiums would be deducted from their wages.

Accrual of paid leave: Employees will be given leave accruals every time a paycheck is generated. Each time employees do not receive a pay check, they are not eligible for leave accruals.

Employee Responsibility

Employees who request leave under this policy must give 30 days’ advance notice, or less in particular circumstances. When the need for leave is unforeseeable, employees must follow the normal procedure for reporting an absence. Employees may not engage in secondary employment or work for another employer or themselves without the prior written permission of their Department Head (see Section 7.2 Secondary Employment). Employees are responsible for entering leave requests in the time and attendance system for the duration of their anticipated leave, regardless of whether it is paid or unpaid. Leave requests must use the codes associated with FML such as FML-Sick, FML-Vacation, FML-Without Pay, etc. so that the 12 weeks can be tracked accurately.

Termination of Leave of Absence

A leave of absence under this policy will end when the need for the leave of absence ends or when the maximum leave described above has been taken, whichever occurs sooner.

Reinstatement

At or before the conclusion of the FML leave of absence, employees are entitled to reinstatement to their former position or to a position equivalent to their former position. Employees must demonstrate that they are fit for duty and must give reasonable notice of intent to return to work.

Extension of Leave without Benefits

Employees who are unable to perform the duties of their position due to their own disability and who have exhausted their entitlement to leave under FMLA by taking 12 weeks of leave during any rolling 12- month period may, at the discretion of the Town Administrator, upon written application to their Department Head, be granted up to an additional 12 weeks of leave. This additional leave of absence does not entitle employees to reinstatement. If employees are able to return to work prior to the exhaustion of their extended leave, they may be returned to their previous position if it is vacant and is authorized to be filled, or to some other position of equal or lesser compensation for which they are qualified and where there is a vacancy authorized to be filled. If employees are not returned to active employment, they may continue on extended leave of absence status until they are returned to active duty status or their extended leave of absence expires, whichever occurs first.

Employees who have exhausted their FML under other circumstances, but who continue to require leave which would qualify for FML if the leave had not been exhausted, may apply for an extended leave of absence for personal reasons. Extended leaves are granted only at the discretion of the Town Administrator.

Termination of Employment

Employment will generally be terminated if an employee does not return to full active employment status at the conclusion of their leave of absence or extended leave of absence. Prior to termination, the circumstances of each employee’s situation will be reviewed by the Town Administrator.

Special Situations

Spouses: When both members of a married couple are employed by the Town, their combined right to a leave of absence because of the birth or placement of a child, to care for a newly-born or placed child, or to care for a parent with a serious health condition is 12 weeks in a 12-month period. It is 26 weeks in a single 12-month period to care for an injured service member.

Because the intent is to bond with the new child, FML because of the birth or placement of a child may not be taken intermittently.

Key Employees

Exempt employees in the highest paid 10% of all employees are considered key employees per the FMLA regulation. Key employees may be denied reinstatement rights if reinstatement would cause substantial and grievous economic injury to operations.