

# Section 6: Leave

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## Policy #2: Family Medical Leave (FMLA)

Effective Date: July 1, 2011

### I. Purpose

The purpose of this policy is to comply with the Family Medical Leave Act provisions.

### II. Scope

This policy shall apply to all persons holding a regular part-time or regular full-time paid position as an employee of the Town, except the Town Manager, Town Attorney, a member of any appointed or volunteer board or committee, or any others that may be hired or appointed by the Town Board. For this purpose, and subject to the exceptions set out herein, Town employees shall be defined as those employees in departments and offices for which the Town Board serves as the final budget authority.

### III. Background

None

### IV. Definitions

**Spouse** - a husband or wife as defined or recognized under State law for purposes of marriage.

**Parent** - a biological, adoptive, step or foster father or mother, or any individual who stood in as a parent when the employee was a son or daughter. The term "parent" does not include parents "in law" (e.g. mother-in-law or father-in-law).

**Son or daughter** – a biological, adopted, or foster child; a step-child; a legal ward; or a child of a person or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

**Next of kin of a covered service member** - the nearest blood relative of that individual other than the covered service member's spouse, parent, son, or daughter in the following order of priority: blood relatives who have been granted legal custody of the covered service member, brothers and sisters, grandparents, aunts and uncles, and first cousins unless the covered service member has designated in writing a specific blood relative as his next of kin for purposes of military caregiver leave under the FMLA.

**Covered service member** - a 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 illness or injury; or, a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness and who was a member of the Armed Forces (including National Guard or Reserves) at any time during the period of five years preceding the date of which the veteran undergoes that medical treatment, recuperation or therapy.

**Covered military member** - an employee's spouse, son, daughter or parent who is on active federal military duty or has been called to active federal military duty status for the United States Armed Forces.

**Qualifying exigency** - includes:

- **Short notice deployment:** to address issues arising when a covered military member is called to active duty within 7 or less days of such deployment. Leave for a short notice deployment may be taken for seven (7) calendar days or less beginning on the date of the covered military member's notice of such leave;
- **Military events and related activities:** to attend official ceremonies, programs or events sponsored by the military that are related to the active duty status of a covered military member or to attend programs and informational briefings sponsored or promoted by the military, military service organizations or the American Red Cross that are related to active duty status of a covered military member;
- **Childcare and school activities:** to arrange for or provide urgent childcare when the call to active duty of a covered military member necessitates a change in an existing childcare arrangement for a covered military member's child; to enroll in or transfer to a new school a covered military member's child; and to attend meetings with school or daycare staff of a covered military member's child;
- **Financial and legal arrangements:** to make or update financial or legal arrangements to address the covered military member's absence while on active duty or to act as the covered military member's representative for the purpose of obtaining benefits;
- **Counseling:** to attend counseling for the covered military member or a covered military member's child;
- **Rest and recuperation:** to spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during a period of deployment. Eligible employees may take up to five (5) days of leave for rest and recuperation;
- **Post-deployment activities:** to attend official ceremonies or programs sponsored by the military in the 90 days following the termination of the

covered military member's active duty status or to address issues that arise from the death of a covered military member; and

- **Additional activities:** to address other events that arise out of the covered military member's active duty or call to active duty provided that the employer and employee agree that the leave shall qualify as an exigency and agree to the timing and duration of such leave.

**Serious health condition** - a condition that requires inpatient care at a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

**Serious injury or illness in the case of a member of the Armed Forces** - an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's duty and was aggravated by service in the line of duty on an active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.

**Serious injury or illness in the case of a veteran who was a member of the Armed Forces at any time during a period when the person was a covered service member** - a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in the line of duty on an active duty in the Armed Forces (or existed before the beginning of the member's duty and was aggravated by service in the line of duty on an active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

**Outpatient status** - the status of a covered service member assigned to either a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control to members of the United States Armed Forces receiving care as outpatients.

**Contingency operation** - a military operation that is (a) designated by the Secretary of Defense as an action where the United States Armed Forces are or may become involved in military actions or b) results in members of the United States Armed Forces being called to active military duty, as defined by law.

**Rolling Forward Method** – the twelve (12) month period is measured forward from the date of hire or the date an employee's FMLA begins.

## V. **Legislation**

Family Medical Leave Act of 1993

## **VI. Policy**

It is the policy of the Town of Mooresville to comply with the Family Medical Leave Act.

## **VII. Provisions**

### **A. Eligibility**

To be eligible for Family Medical Leave, an employee must have been employed by the Town of Mooresville for at least twelve months and must have worked at least 1250 hours of service during the twelve month period preceding the commencement of the leave. The twelve month period shall be determined using the “rolling forward” method.

### **B. Leave Entitlement**

#### **i. Twelve (12) Weeks**

Eligible employees may request up to twelve weeks of Family Medical Leave for the following reasons:

- Birth or placement of a child – Eligible employees may request a leave of absence to provide care for a child following the child’s birth, adoption or foster placement in the employee’s home. This leave must conclude twelve weeks after the child is born, adopted or placed in the employee’s home.
- Illness of a family member – Employees may request a leave of absence to provide care for a child, parent or spouse who has a serious health condition as certified by a licensed healthcare provider.
- Illness of an employee – Employees may request a leave of absence if they are unable to work due to their own serious health condition as certified by a licensed health care provider.
- Qualified exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces – An employee whose spouse, son, daughter or parent has been notified an impending call or order to covered active military duty or who is already on covered active duty may request a leave of absence as certified by the call-up notice. This type of leave may commence as soon as the individual receives the call-up notice.

ii. Twenty-six (26) Weeks

Eligible employees may request up to twenty-six weeks of Family Medical Leave for the following reason:

- Military Caregiver Leave – Eligible employees may request a leave of absence to care for an injured or ill service member or veteran. An employee whose son, daughter, parent or next of kin is a covered service member may take up to twenty-six weeks in a single twelve-month period to take care of that service member.

iii. Married Employees

If spouses are both employed by the Town, they may take a combined total of 12 weeks of FMLA leave within the “12-month period” for any birth or placement of a child, or to care for a seriously ill parent or dependent, or a combined total of twenty-six (26) weeks within the “12-month period” to care for a covered service member, both of which can be split between spouses in any proportion. Any such leave taken by each employee shall be charged against that employee’s available 12 weeks of FMLA leave for his/her own serious health condition or to care for a child or spouse with a serious health condition or 26 weeks of FMLA leave to care for a covered service member.

**C. Intermittent Leave**

Employees can take leave on an intermittent basis or work a reduced schedule under the following circumstances:

- i. Intermittent/Reduced leave may be taken when medically necessary to care for a seriously ill family member, because of the employee’s own serious health condition, because of qualified exigency leave for families of members of the Armed Forces, and for military caregiver leave.
- ii. Intermittent/Reduced leave may be taken to care for a newborn or newly placed adopted or foster care child only with Town of Mooresville approval and is not required by law.

**D. Requesting Leave**

An employee seeking leave of more than 3 days for any medical purpose is required to complete a Request for Family Medical Leave form (Attachment A) and submit it to Human Resources. Employees should provide notice at least 30 days in advance of the requested leave, whenever possible. When an unexpected situation develops, the employee should notify the Town as soon as

possible or within five days after the first day of leave. When possible, employees should schedule foreseeable medical treatments so as to minimally disrupt the Town's operations.

All requests for FMLA leave must fully explain the reasons for leave to allow the Town to determine whether the leave actually qualifies under Federal Law. If an employee refuses or fails to give reasons for requesting FMLA leave or refuses or fails to provide a proper certification, the Town may deny leave until such information is provided.

**E. Notice of Eligibility and Rights & Responsibilities**

Within five business days upon receipt of an Employee's request to family medical leave, the Department of Human Resources will send the employee a Notice of Eligibility and Rights & Responsibilities (Attachment B).

<http://www.dol.gov/whd/forms/wh-381.pdf>

**F. Certification of Leave**

Depending upon the reason for needing family medical leave, attached to the Notice of Eligibility and Rights & Responsibilities may be one of the following certification forms:

- Certification of Health Care Provider for Employee's Serious Health Condition (Attachment C) <http://www.dol.gov/whd/forms/WH-380-E.pdf>
- Certification of Health Care Provider for Family Member's Serious Health Condition (Attachment D) <http://www.dol.gov/whd/forms/WH-380-F.pdf>
- Certification of Qualifying Exigency For Military Family Leave (Attachment E) <http://www.dol.gov/whd/forms/WH-384.pdf>
- Certification for Serious Injury of Illness of Covered Servicemember for Military Family Leave (Attachment F) <http://www.dol.gov/whd/forms/WH-385.pdf>

The employee has fifteen (15) calendar days to return the appropriate form to the Department of Human Resources; additional time may be approved in some circumstances. If sufficient information is not provided in a timely manner, leave may be denied. The Town can seek clarification through its own provider and/or require the employee to undergo a second independent examination at the Town's expense.

**G. Designation Notice**

Within five business days upon receipt of an Employee's Leave Certification forms, the Department of Human Resources will send the employee a

Designation Notice (Attachment G). <http://www.dol.gov/whd/forms/WH-382.pdf>

**H. Return to Duty (Employee's Serious Health Condition)**

An employee using family medical leave due to his/her serious health condition is deemed unable to work until written approval has been obtained from a doctor. A Return to Duty authorization must be received from the employee's treating physician prior to returning to work with the Town.

**I. Benefits During Leave**

- i. Under FMLA, the Town will maintain the same level of coverage under the group insurance benefits for the duration of an employee's FMLA leave.
- ii. The employee is responsible for payment of his/her portion of group insurance premiums or other ancillary benefits during such leave just as if he/she were still on the Town's payroll. Employees will receive advance notice of the costs, and a schedule for remitting these payments will be provided. If the payment is more than 30 days overdue, the Town's obligation to continue group insurance and ancillary benefits ceases. If group insurance or ancillary benefits are discontinued because the employee has not made the required interim payments while on FMLA leave, upon the employee's return from FMLA leave, group insurance benefits will be restored to the employee as if the leave had not been taken and the premium payment(s) had not been missed. The Town will then recoup the missed payments through payroll deductions.
- iii. If the employee does not return from scheduled FMLA leave, except for circumstances beyond the employee's control, the Town may consider the employee to have voluntarily resigned and recover all group insurance and ancillary benefit premiums it paid on the employee's behalf during the FMLA leave. Such voluntary resignation may be a qualifying event entitling the employee to the option of continuing his or her group insurance coverage under COBRA.

**J. Job Restoration**

- i. Upon return from Family Medical Leave, eligible employees will be restored to their original position or to an equivalent position with virtually identical benefits, pay, and other terms and conditions of employment. Employees who return after taking more than the twelve-

weeks of Family Medical Leave entitlement are not covered by restoration rights.

- ii. Certain “key employees” (a salaried employee who is among the highest paid 10% of all employees at the work site) may be denied reinstatement, if necessary, to prevent substantial and grievous economic injury to the Town’s operations.
- iii. Employees on Family Medical Leave must notify the Department of Human Resources at least two weeks prior to end of leave of their availability to return to work. The Town of Mooresville may require appropriate medical certification before an employee returns to work. An employee’s failure to return from leave or failure to contact the Department of Human Resources on the scheduled date of return will be considered a voluntary resignation.
- iv. An employee who gives notice of intent not to return to work will be considered to have voluntarily resigned.

**K. Use of Paid Leave**

During Family Medical Leave all accrued paid leave and accrued compensatory time must be used prior to taking unpaid leave. Any paid or unpaid time off used for Family Medical Leave counts against the twelve or twenty-six week Family Medical Leave entitlement.

**VIII. Authorization**

Approved by:

*Erskine Smith*  
Town Manager

*July 1, 2011*  
Date



# TOWN OF MOORESVILLE

## Employee Request for Family Medical Leave

*To be completed by the employee and submitted to the Department of Human Resources 30 days in advance of the requested leave. In the event of an unexpected situation, it should be submitted within five days after the first day of leave.*

Date of Request: \_\_\_\_\_ Employee Name: \_\_\_\_\_

Department: \_\_\_\_\_ Supervisor: \_\_\_\_\_

### Type of Family Medical Leave Requested:

- The birth of my child, or placement of a child with me for adoption or foster care
  
- My own serious health condition
  
- Because I am needed to care for my \_\_\_ spouse; \_\_\_ child; \_\_\_ parent due to his/her serious health condition
  
- Because of a qualifying exigency arising out of the fact that my \_\_\_ spouse; \_\_\_ son or daughter; \_\_\_ parent is on active duty or call to duty status in support of a contingency operation as a member of the National Guard or Reserves
  
- Because I am the \_\_\_ spouse; \_\_\_ son or daughter; \_\_\_ parent; \_\_\_ next of kin of a covered service member with a serious injury or illness

Leave will begin on: \_\_\_\_\_ Leave will end on: \_\_\_\_\_

Number of days of FMLA leave that I have taken in the past 12 months: \_\_\_\_\_