

## TOWN OF LANCASTER

### FAMILY AND MEDICAL LEAVE ACT POLICY

Adopted by the Town Board of the Town of Lancaster, NY on April 15, 2013

#### A. General Provisions

The Family and Medical Leave Act (the “FMLA”) permits eligible employees to take an unpaid leave of absence for up to twelve (12) workweeks during a twelve (12) month period. And, in rare situations, the FMLA permits eligible employees to take up to twenty-six (26) workweeks of unpaid leave in a single twelve (12) month period. This Policy outlines the procedures the Town of Lancaster (the “Town”) will follow in providing employees with leave under the FMLA. More detailed information regarding the benefits and procedures under the FMLA are set forth in the FMLA itself and the regulations thereunder.

#### B. Eligibility for FMLA Leave

All employees are eligible for FMLA leave provided that they have:

1. Been employed by the Town for at least twelve (12) months; *and*
2. Worked at least 1,250 compensable hours during the 12-month period immediately preceding the commencement of the leave.

#### C. Circumstances Qualifying for Leave

- The FMLA allows eligible employees to take up to twelve (12) workweeks of unpaid leave during any “rolling” 12-month period (measured backward from the date an employee uses FMLA leave) for any one or more of the following purposes:
1. For the birth of a child, and to care for the newborn child (during the newborn’s first twelve months);
  2. For the placement with the employee of a child for adoption or foster care, and to care for the newly placed child (during the first twelve months after the placement of the adopted child);
  3. To care for the employee’s spouse, son, daughter, or parent with a serious health condition;
  4. For circumstances where an employee is unable, because of a serious health condition, to perform any one of the essential functions of his or her job; and
  5. For any “qualifying exigency” arising out of the fact that the employee’s spouse, son, daughter, or parent is on (or has been notified of an impending call or order to) “covered active duty” in the United States

Armed Forces, including the National Guard or Reserves (“Military Member”).

- a. “Covered active duty,” for members of a regular component of the Armed Forces, means duty during deployment of the Military Member with the Armed Forces to a foreign country. “Covered active duty,” for members of National Guard or Reserves, means duty during deployment of the Military Member with the Armed Forces to a foreign country under a call or order to active duty in a “contingency operation,” as defined by law.
- b. A “qualifying exigency” exists where one of the following events occurs:
  - (1) Short-notice deployment. Issues arising from a Military Member’s short-notice deployment (i.e., deployment on seven (7) or less days of notice) for a period of seven (7) days from the date of notification;
  - (2) Military events and related activities. To attend military events and related activities, including family support or assistance programs and informational briefings that are related to the active duty or call to active duty status of a Military Member;
  - (3) Childcare and school activities. To attend to certain childcare and school activities that are necessitated by a Military Member’s active duty or call to active duty status, such as:
    - (i) arranging for alternative childcare; (ii) providing childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis); (iii) enrolling in or transferring to a new school or day care facility; and (iv) attending meetings with staff at a school or daycare facility;
  - (4) Financial and legal arrangements. To make or update financial and legal arrangements to address a Military Member’s absence;
  - (5) Counseling. To attend counseling provided by someone other than a health care provider for oneself, for a Military Member, or for a child of a Military Member, when the need for such counseling arises from a Military Member’s active duty or call to active duty status;

- (6) Rest and recuperation. To spend time with a Military Member who is on short-term, temporary, rest and recuperation leave during deployment for up to five (5) days;
  - (7) Post-deployment activities. To attend certain post-deployment activities, for a period of ninety (90) days following the termination of a Military Member's active duty status, and to attend to issues that arise from a Military Member's death;
  - (8) Additional activities. To attend to additional activities which arise out of a Military Member's active duty or call to active duty status that the Town and employee agree is a qualifying exigency.
- The FMLA allows an eligible employee who is the spouse, son, daughter, parent, or "next of kin" of a Servicemember to take up to twenty-six (26) workweeks of unpaid leave during a single 12-month period (measured forward from the first day the employee takes such FMLA leave) to care for the Servicemember.
1. A "Servicemember" is defined as:
    - a. 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 injury or illness"; or
    - b. 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 a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy, and who was discharged or released from the Armed Forces under conditions other than dishonorable ("Injured Veteran").
  2. For purposes of Servicemember leave, "serious injury or illness" means:
    - a. For a Servicemember who is currently a member of the Armed Forces (including the National Guard or Reserves), an injury or illness that was incurred by the Servicemember in the line of duty on active duty in the Armed Forces (or that existed before the beginning of the Servicemember's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the Covered Servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating; and

- b. For a Servicemember who is an “Injured Veteran,” a “qualifying injury or illness,” as defined by law, that was incurred by the Covered Servicemember in the line of duty on active duty in the Armed Forces (or that existed before the beginning of the Servicemember’s active duty and was aggravated by the service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after he or she was discharged or released from the Armed Forces under conditions other than dishonorable.
  3. Important limitation: If an employee does not take all of his or her 26 workweeks of leave entitlement to care for a Servicemember during the 12-month period, the remaining part of his or her 26 workweeks of leave is forfeited.
  4. Maximum duration of leave in any 12-month period: This leave is applied on a per-covered-Servicemember, per-injury basis such that an employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different Servicemembers or to care for the same Servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period.
  5. “Next of kin”: An employee is “next of kin” of a Servicemember if he or she is the nearest blood relative of the Servicemember (other than the Servicemember’s spouse, parent, or child). Unless the Servicemember has specifically designated in writing a particular blood relative as his or her nearest blood relative for the purposes of military caregiver leave, the following is the order of priority used to determine who are the nearest blood relatives of the Servicemember: (a) blood relatives who have been granted legal custody of the Servicemember, (b) siblings, (c) grandparents, (d) aunts and uncles, and (e) first cousins. When no such designation is made, and there are multiple family members with the same level of relationship to the Servicemember, all such family members shall be considered the Servicemember’s next of kin and may take FMLA leave to provide care to the Servicemember either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the Servicemember’s only next of kin.
- Special rule for spouses employed by the Town. In accordance with the FMLA regulations issued by the United States Department of Labor, a husband and wife who are eligible for FMLA leave and who are both employed by the Bank, may be limited to a combined total of 12 or 26 weeks of leave, depending on the type of leave, during the applicable 12-month period if the leave is taken for the birth of the employee’s son or daughter or to care for the child after birth, for

placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a covered Servicemember with a serious injury or illness.

**D. Procedure for Requesting Leave**

1. Who to notify of need for leave. An employee is required to notify the Town, through the Payroll Supervisor, of any request for FMLA leave.
2. Foreseeable leave. If the leave is foreseeable, such notice must be provided at least thirty (30) days prior to the date on which the FMLA leave is to commence. If thirty (30) days notice is not practicable, notice must be given as soon as practicable (normally no later than the next business day after learning of the need for leave).
3. Foreseeable qualifying exigency leave. For foreseeable leave due to a qualifying exigency, notice must be provided to the Town as soon as practicable regardless of how far in advance such leave is foreseeable (normally no later than the next business day after learning of the need for leave).
4. Unforeseeable leave. When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the Town as soon as practicable and, absent unusual circumstances, in accordance with the Town's normal call-in procedures.
5. Foreseeable medical treatment. If an employee is planning medical treatment, he or she must consult with the Town and make a reasonable effort to schedule the treatment so that it does not unduly disrupt the Town's operations.
6. Periodic reports. While on leave, employees are required to furnish the Town with periodic reports regarding his or her status and intent to return to work.
7. Early return from leave. If an employee on leave discovers that he or she is able to return to work earlier than previously indicated, he or she should notify the Town at least two (2) business days prior to the date he or she intends to return to work.
8. Subsequent change in need for leave. The employee must advise the Town as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown, and provide supporting documentation.

**E. Intermittent Leave or Reduced Schedule**

1. Employees may take leave on an intermittent or reduced schedule basis in certain situations where there is a medical need for the employee or his or her parent, child, or Servicemember for such leave and that medical need is best accommodated through intermittent leave or reduced schedules.
2. Intermittent leave or reduced schedules shall be provided only in consultation with the Payroll Supervisor or designee.
3. If an employee requests intermittent leave or a reduced schedule:
  - a. The employee shall provide the Town with the anticipated timing and duration of the leave or reduced schedule.
  - b. The Town may transfer the employee to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position;
4. If an employee needs intermittent leave or a reduced schedule for planned medical treatment, he or she must make a reasonable effort to schedule the treatment so that it does not unduly disrupt the Town's operations.

**F. Status of Accrual Benefits During FMLA Leave**

All benefits that the Town provides which operate on an accrual basis (e.g., vacation, sick, and personal days) will cease to accrue during any period of unpaid FMLA leave.

**G. Substitution of Paid and Unpaid Leave**

1. An employee approved for FMLA leave will be required to use all accrued, unused paid leave days (e.g., vacation, personal, compensatory time, and sick days) during any unpaid leave period. These paid leave days will run concurrently with unpaid FMLA leave.
2. Once such paid leave days are exhausted, the balance of the leave will be unpaid leave in accordance with the FMLA.
3. Paid leave that also qualifies for FMLA leave (e.g., leave for short-term or work-related disability or injury) will be designated as FMLA leave.

## **H. Employee Status and Group Health Benefits During FMLA Leave**

### 1. Employee status

An employee on approved FMLA leave will not have any previously accrued benefit altered while on FMLA leave.

### 2. Health benefits

a. An employee on approved FMLA leave will continue to be covered by the Town's group health plan on the same terms that would have applied if he or she had continued working during the entire leave period. Thus, any share of premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period.

b. The Town may elect, in its discretion, to terminate the health benefits of an employee on FMLA leave if that employee is more than thirty (30) days late in paying the required premiums. An employee's use of leave constitutes his or her consent to have the Town promptly deduct any unpaid employee health insurance premiums upon his or her return to work.

c. An employee on approved FMLA leave will be subject to any changes in the Town's group health plan that occurs while he or she is on FMLA leave (e.g., changes in coverage, premiums, deductibles).

d. An employee on approved FMLA leave who fails to return to work at the end of the leave will be required to reimburse the Town for all premium payments expended by the Town on the employee's behalf during the period of unpaid FMLA leave, unless the reason the employee does not return to work is due to:

- (1) The continuation, recurrence, or onset of a serious health condition of the employee or the employee's spouse, son, daughter, or parent;
- (2) The serious injury or illness of a spouse, son, daughter, or parent, or next of kin, who is a Servicemember; or
- (3) Other circumstances beyond the employee's control.

## I. Certification

1. Requirement. Any request for FMLA leave must be supported by an appropriate certification from a health care provider or the United States military, as the case may be, when the request is necessitated by:
  - a. An employee's serious health condition;
  - b. A serious health condition of an employee's spouse, child, or parent;
  - c. A qualifying exigency; or
  - d. An employee providing care for a Servicemember who sustained a serious injury or illness in the line of duty.
2. Recertification. Recertification and the need for the leave must be submitted periodically, as directed by the Payroll Supervisor. Recertification may be required every 30 days unless the period indicated by the employee's healthcare provider is longer. In all cases, the Town may request recertification every six (6) months. In addition, recertification may also be sought whenever there is a change in circumstances described in the previous certification, even if that certification was provided less than 30 days prior to the change in circumstances.
3. Consequences for not providing certification or recertification. Failure to provide the required certification may delay the start of FMLA leave or result in the denial of FMLA leave.
4. Additional certifications and medical opinions. If, at any time, the Town questions the validity of the need for leave, a subsequent recertification and additional medical opinions may be required consistent with the FMLA.
5. Fitness-for-duty certifications.
  - a. Leave. If an employee's FMLA leave was occasioned by his or her own serious health condition, he or she is required to obtain, before returning to work, a fitness-for-duty certification from a health care provider stating that he or she is able to resume work.
  - b. Intermittent leave. Where reasonable job safety concerns exist, the Town may require a fitness-for-duty certification from an employee on intermittent leave.

- c. Any fitness-for-duty certification must be submitted to the Town's payroll supervisor.

**J. Key Employees**

1. The Town may deny reinstatement to "key employees" where it is necessary to prevent substantial and grievous economic injury to the operations of the Town.
2. A key employee is a salaried employee who is among the highest paid ten percent (10%) of all the employees employed by the Town at the time he or she gives notice of the need for FMLA leave.
3. If the Town believes that an employee is a key employee, it must, at the time the employee gives notice of the need for FMLA leave (or when the FMLA leave commences, if earlier), immediately give written notice to that employee that he or she is a key employee.

**K. Recordkeeping**

The Town's payroll supervisor or designee shall maintain records concerning compliance with the FMLA in accordance with the FMLA and accompanying regulations.