



TOWN OF NEEDHAM
FAMILY AND MEDICAL LEAVE
POLICY AND PROCEDURES
Policy #312

I. PURPOSE AND SCOPE

The purpose of this policy is to establish the eligibility, duration and procedural requirements relating to the administration of family and medical leave in accordance with the Family and Medical Leave Act (FMLA) of 1993.

II. APPLICABILITY

This Policy applies to all employees of the TOWN OF NEEDHAM (the “Town”) who meet the eligibility requirements of the law, excluding those employees under the supervision and control of the School Committee.

III. DEFINITIONS

12-Month Period. For purposes of this policy, the 12-month period is a “rolling” 12 – month period measured backward from the date any FMLA commences.

Spouse. A husband or wife as defined or recognized by valid marriage certificate. When FMLA eligible spouses are both employed by the Town of Needham, they will each be granted a separate total of 12 weeks of FMLA leave for the birth, placement for adoption or foster care of a child or care of a parent with a serious health condition.

Child. a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under the age of 18, or is age 18 or is age 18 or older and incapable of self-care because of physical or mental disability as that term is defined under the Americans with Disability Act.

Parent. a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents “in law.”

In Loco Parentis. those with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may, nonetheless, stand in loco parentis to the child and be entitled to FMLA leave. Similarly, an employee may take leave to care for someone who, although having no legal or biological relationship to the employee when the employee was a child, stood in loco parentis to the employee when the employee was a child, even if they have no legal or biological relationship.

Serious Health Condition. As defined in accordance with the Family and Medical Leave Act 29 CFR S825.114), a serious health condition is an illness, impairment or physical or mental condition that involves:

- (1) Inpatient care or an overnight stay in a medical care facility, or
- (2) continuing treatment by a healthcare provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualifies family member from participating in school or other daily activities.
- (3) A period of incapacity of more than three consecutive calendar days, **AND** any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - (a) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - (b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

IV. POLICY

The Family and Medical Leave Act of 1993 (FMLA) entitles eligible employees to take up to a maximum of 12 weeks (480 hours of unpaid, job protected leave in a 12-month period for specified family and medical reasons.

A. Eligibility. To be eligible for the FMLA entitlement, an employee must:

- Have worked for the Town of Needham for a total of at least 12 months; and
- Have worked at least 1,250 hours over the previous 12 months

B. Qualifying Reasons. As a covered employer, The Town of Needham may grant an eligible employee FMLA leave for one or more of the following reasons:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care, and to bond with the newborn or newly-placed child;
- To care for a spouse, son, daughter, or parent who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job, including incapacity due to pregnancy and for prenatal medical care; or
- Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty"; or

Twenty-six work weeks of leave during the single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

V. PROCEDURES

All employees who request any type of family and medical leave are required to follow procedures as outlined in this policy.

A. Employee Notice

Employees may submit the initial request for FMLA in writing via mail, e-mail or in person delivery to their direct supervisor or to Human Resources. If submitting request to directly to their supervisor, the supervisor must then forward the request to Human Resources for review and approval. The Human Resources Director or designee will designate leave as FMLA.

When the need for leave is foreseeable, the employee must notify their manager or supervisor at least thirty (30) days prior to the desired leave time. They must complete the required documentation as outlined in this policy.

If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the Human Resources department may delay the taking of FMLA leave until thirty (30) days after the date the employee provides notice of the need for FMLA leave.

If the need for leave is unforeseeable, employees must provide verbal notification to their manager or supervisor of the leave as soon as possible. Once they are able, employees must complete the required documentation as outlined in this policy.

All eligible employees requesting FMLA leave must indicate their intention to return to active employment with the Town of Needham at the end of the leave.

B. Medical Certification

The Town of Needham will require written medical certification in all instances of employee or family member illness. Medical certification must be provided to the Town Human Resources Department on the official Department of Labor certification form and must be submitted to the Town within 15 days of the original request for FMLA leave.

The following designated Department of Labor forms must be used in the FMLA Request process:

- WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition
- WH-380-F, Certification of Health Care Provider for Family Member's Serious Health Condition
- WH-384, Certification of Qualifying Exigency for Military Family Leave

- WH-385, Certification for Serious Injury or Illness of a Covered Servicemember - or Military Family leave
- WH-385-V, Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

These forms are available on the Town of Needham's website or on the Department of Labor's website at dol.gov/whd/fmla.

When the employee is on leave status, the Town may require periodic updates as permitted under the law.

The Town of Needham may, on a case-by-case basis determined by the Human Resources Director, require an employee to provide a second opinion regarding their own or family member's illness. If a second opinion is required, it will be at the Town's expense.

The Town of Needham may require an employee on leave for their own health condition to submit certification of fitness to duty from their medical provider prior to returning to work.

Town Designation of FMLA: Employees who are out of work for reasons that would qualify for leave under this policy, irrespective of whether leave has been requested by the employee, are required upon request, to provide to the Town the information and certifications required by this policy. If the Town has adequate information to suspect that the leave taken is due to a qualifying reason, the Town shall designate as Family and Medical Leave, which shall run against the twelve or twenty-six weeks allowed under this policy. Employees cannot waive, nor may the Town induce employees to waive, their prospective rights under FMLA.

The Town may retroactively designate the absence as FMLA leave if the Town provides appropriate notice to the employee and the retroactive designation does not cause harm or injury to the employee. In all cases where leave would qualify for FMLA protections, the Town and employee can mutually agree that leave be retroactively designated as FMLA leave.

Outside Employment while on approved FMLA: Employees on approved FMLA may not engage in any gainful outside or supplemental employment without providing advance, written authorization from their treating physician to be reviewed and approved by the Human Resources Department. The authorization must adequately prove that the nature and working conditions of the outside employment are not the same or equivalent to the essential functions of the Town position, and should in no way interfere with or be detrimental to on-going treatment. This includes secondary jobs in other Town of Needham departments including the School district.

C. Use of Leave (Continuous, Intermittent or Reduced Schedule)

Leave can be taken in a continuous block, or can be taken intermittently or on a reduced schedule. Intermittent leave may be allowed when medically necessary and so long as the employee has made reasonable effort to schedule treatment so as not to unduly disrupt their department's operations. In the case of birth or adoption, intermittent leave or reduced hours schedules may be allowed on a case-by-case basis at the approval of the department manager.

Employees who have been approved for intermittent leave or reduced hours schedules must comply with regular department call-out protocol for each unforeseen absence. Employees on approved intermittent leave or reduced schedule must indicate to their supervisor or staff person responsible for submitting payroll the number of hours per week to be designated as FMLA leave.

D. Leave Integration

Substitution of Paid Leave. Employees may choose to substitute any accrued paid leave, or any leave available and granted under Personnel Policies or applicable Collective Bargaining Agreement, for FMLA leave. Substitute means that the accrued paid leave will run concurrently with the unpaid FMLA leave. When paid leave is used for an FMLA-covered reason, the leave is FMLA-protected.

Other Leaves qualified under state and federal laws. (i.e. Massachusetts Parental Leave). Any family or medical leave which qualifies under both state and federal laws will be used concurrently to the extent permitted by those laws. In no instance will leave entitled under State law be used in addition to, or following the conclusion of, leave used under Federal Law for the same purpose.

Workers Compensation/Public Safety Injured-on-Duty. Whereas workers compensation benefits are paid out as 60% of average weekly wages, employees may choose to utilize accrued leave to supplement those benefits and total no more than 100% of their regular weekly wages.

E. Effect on Benefits

Health, Life and other insurance coverage

- Employees on paid status will have their share of health and life insurance, and other benefit premiums (if applicable) deducted from their paychecks.
- Employees may, upon notification to their department staff responsible for submitting payroll, utilize only enough accrued paid time to cover the cost of benefits deductions, so as to assure timely payment of benefits throughout the duration of their leave.
- Employees on unpaid status for less than one calendar month will have their share of benefit premiums recouped via payroll deductions upon return to work.
- Employees who are on unpaid status for more than one calendar month will be billed directly for their benefit premiums each month.
- Employees who fail to submit payment within thirty (30) days of due date will be notified by certified mail that their health/life insurance coverage will be canceled if no payment is received within 15 days receipt of the notification. Reinstatement to the Town's plan will involve paying all past premiums owed to the Town, and may require insurance company approval.

Other Benefits/Accruals

- Employees on paid or unpaid status during an approved FMLA leave will continue to accrue all leaves and benefits.

F. Failure to Return to Work

If the employee fails to return within 12 weeks following the commencement of an approved FMLA leave, regardless of the availability of additional accrued leave time, job protections will cease and the employer may move forward with terminating the employee in order to fill the position due to operational needs. The employee may be reinstated to their same position only if the position is still available and has not been filled.

If an employee fails to return to work after any FMLA leave (unless failure to return is through no fault of the employee) the Town may require reimbursement for health and life insurance premium payments. The Town may recoup these payments through any legal means necessary.

If the employee finds that the 12 weeks FMLA leave entitlement is not sufficient, they may request an unpaid leave of absence in accordance with Town policy or the relevant collective bargaining agreement.

VI. ACKNOWLEDGMENT OF RECEIPT OF POLICY

I acknowledge receipt of the *Family and Medical Leave Policy* from the Town of Needham, and I have read its contents.

Name (Print)

Signature

Date