

TOWN OF PRESCOTT VALLEY
POLICIES AND PROCEDURES

Subject:	File Under Section:
FAMILY AND MEDICAL LEAVE ACT	PERSONNEL

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	Date: <u>3-30-15</u> /S

1.0 POLICY

1.1 It is the policy of the Town of Prescott Valley to provide eligible employees the opportunity to take unpaid, job-protected leave for certain specified reasons in accordance with the Family and Medical Leave Act of 1993 (FMLA), as amended. Eligible employees are entitled to family and medical leave under the terms and conditions stated in this policy, the regulations issued by the Department of Labor under the FMLA and the Town's other applicable leave policies.

2.0 PURPOSE

2.1 The Town has adopted this policy to implement the terms of the FMLA. It is to be interpreted and applied in accordance with the FMLA and the related regulations adopted by the Department of Labor.

2.2 This policy outlines the basic procedures for administering requests for job-protected leave under the provisions of the FMLA.

3.0 APPLICABILITY

3.1 This Policy is applicable to all employees who have worked for the Town for a total of at least twelve (12) months and for at least 1,250 hours during the twelve-month period preceding the start of the leave.

4.0 REFERENCE

- 4.1 The Family and Medical Leave Act of 1993
- 4.2 Code of Federal Regulations Part 825
- 4.3 National Defense Authorization Act of 2007, 2008 and 2010
- 4.4 Town of Prescott Valley Personnel Policy No. 2-08 General Leave
- 4.5 Town of Prescott Valley Personnel Policy No. 2-11 Return to Work

5.0 DEFINITIONS

- 5.1 *ADA* means the Americans with Disabilities Act.
- 5.2 *Adoption* means legally and permanently assuming the responsibility of raising a child as one's own. The source of an adopted child (e.g., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for FMLA leave.
- 5.3 *Continuing treatment by a health care provider* means any one of the following:
 - 5.3.1 *Incapacity and treatment.* A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - 5.3.1.1 Treatment (as defined in this Section) two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist (circumstances beyond the employee's control that prevent a scheduled or planned follow-up visit), by a health care provider, by a nurse 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
 - 5.3.1.2 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.
 - 5.3.1.3 The first treatment required in this subsection must occur within seven days of the first day of incapacity.
 - 5.3.1.4 Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.
 - 5.3.2 *Pregnancy or prenatal care.* Any period of incapacity due to pregnancy, or for prenatal care. Absences may qualify for FMLA leave even though the employee or the covered family member does not receive treatment during the absence and even if the absence does not last more than three consecutive full calendar days (e.g., severe morning sickness).
 - 5.3.3 *Chronic conditions.* Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. Absences may qualify for FMLA leave even though the employee or the covered family member does not receive treatment during the absence and even if the absence does not last more than

three consecutive full calendar days (*e.g.*, an employee is unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level). A chronic serious health condition is one which:

5.3.3.1 Requires periodic visits (at least twice per year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

5.3.3.2 Continues over an extended period of time (including recurring episodes of a single underlying condition); and

5.3.3.3 May cause episodic rather than a continuing period of incapacity (*e.g.*, asthma, diabetes, epilepsy, *etc.*).

5.3.4 *Permanent or long-term conditions.* A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (*e.g.*, Alzheimer's, severe stroke, or the terminal stages of a disease). The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

5.3.5 *Conditions requiring multiple treatments.* Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

5.3.5.1 Restorative surgery after an accident or other injury; or

5.3.5.2 A condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), kidney disease (dialysis).

5.4 *Covered active duty or call to covered active duty status* means duty during the deployment of a member of the Regular Armed Forces to a foreign country and duty during deployment of a member of the Reserve components of the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.

5.5 *Covered servicemember* means:

5.5.1 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, or

5.5.2 A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

5.6 *Covered veteran* means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under

conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

5.7 *Eligible employee* means:

5.7.1 An employee who has been employed by the Town for a total of at least 12 months, which need not be a consecutive 12-month period. But, the Town need not consider any period of previous employment that occurred more than seven years before the date of the most recent hiring of an employee *unless* the break in service was caused by the fulfillment of the employee's Unformed Services Employment and Reemployment Rights Act (USERRA) or a written agreement exists concerning the Town's intention to rehire the employee after the break in service. A period of absence from work due to or necessitated by USERRA must also be counted in determining whether the employee has been employed for at least 12 months by the Town; and

5.7.2 An eligible employee must also have worked at least 1,250 hours during the 52-week period immediately preceding the date on which any FMLA leave is to commence (hours of service requirement), *except that* an employee returning from fulfilling his or her USERRA-covered service obligation shall be credited with hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA.

5.8 *Foster care* means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child. Although foster care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

5.9 *Health care provider* means:

5.9.1 A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or

5.9.2 Any other person determined by the Secretary of Labor to be capable of providing health care services including *only* those providers expressly set forth under 29 CFR part 825.102, (definition for *Health Care Providers*).

5.10 *Incapable of self-care* means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

- 5.11 *“In loco parentis”* means persons with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- 5.12 *Intermittent leave* means leave taken in separate periods of time, rather than for one continuous period of time, and may include leave of periods in 15-minute increments or a single work day. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of time.
- 5.13 *Military caregiver leave* means leave taken to care for a covered servicemember with a serious injury or illness under the Family and Medical Leave Act of 1993.
- 5.14 *Next of kin of a covered servicemember* means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.
- 5.15 *Outpatient status* means, with respect to a covered servicemember who is a current member of the Armed Forces, the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- 5.16 *Parent* means 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 son or daughter as defined below. This term does not include parents “in law.”
- 5.17 *Parent of a covered servicemember* means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents “in law.”
- 5.18 *Person* means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, and includes a public agency for purposes of this part.
- 5.19 *Physical or mental disability* means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR part 1630, issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, as amended, define these terms.

- 5.20 *Public agency* means the government of the United States; the government of a State or political subdivision thereof; any agency of the United States (including the United States Postal Service and Postal Regulatory Commission), a State, or a political subdivision of a State, or any interstate governmental agency.
- 5.21 *Qualifying Exigency* means an exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty).
- 5.22 *Reduced leave schedule* means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.
- 5.23 *Reserve components of the Armed Forces*, for purposes of qualifying exigency leave, include the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve, and Coast Guard Reserve, and retired members of the Regular Armed Forces or Reserves who are called up in support of a contingency operation.
- 5.24 *Serious health condition* means an illness, injury, impairment or physical or mental condition that involves inpatient care as defined in 29 CFR part 825.114 or continuing treatment by a health care provider as defined in part 825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury and removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of part 825.113 are met.
- 5.25 *Serious injury or illness* means:
- (1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness 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 member'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 servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; and
 - (2) In the case of a covered veteran, 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 active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:
 - (i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or

(ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or

(iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

(iv) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. *See also* §825.127(c).

- 5.26 *Son or daughter* means 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 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.
- 5.27 *Son or daughter of a covered servicemember* means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.
- 5.28 *Son or daughter on covered active duty or call to covered active duty status* means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age.
- 5.29 *Spouse* means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized.

6.0 EMPLOYEE LEAVE UNDER FMLA

- 6.1 Reasons for Leave. Except in the case of leave to care for a covered servicemember under Section 6.3 below, an eligible employee (Section 5.7) is entitled to an unpaid leave of absence of up to 12 workweeks during any rolling 12-month period measured backward from the date the leave commences for one, or any combination, of the following reasons:
- 6.1.1 The birth of the employee’s son or daughter, and to care for the newborn child;
- 6.1.2 The placement with the employee of a son or daughter (Section 5.25) for adoption or foster care, and to care for the newly placed child;
- 6.1.3 To care for the employee's spouse, son, daughter, or parent with a serious health condition;

- 6.1.4 A serious health condition (Section 5.23) of the employee that makes the employee unable to perform one or more of the essential functions of his or her job; and,
- 6.1.5 Because of any military qualifying exigency arising out of the fact that the employee's spouse, son or daughter of any age, or parent is a military member on covered active duty status (or has been notified of an impending call or order to covered active duty). An eligible employee may take FMLA leave for one or more of the following qualifying exigencies:
 - 6.1.5.1 Short-notice deployment. Leave up to seven (7) calendar days prior to the date of deployment to address any issue that arises from the fact that the military member is notified of an impending call or order to covered active duty . Leave taken for this purpose can be used for a period of seven calendar days beginning on the date the military member is notified of an impending call or order to covered active duty.
 - 6.1.5.2 Military events and related activities. Leave required (i) to attend any official ceremony, program, or event sponsored by the military that is related to the covered active duty or call to covered active duty status of the military member and (ii) to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member.
 - 6.1.5.3 Childcare and school activities. For the purposes of leave for childcare and school activities listed in (i) through (iv) of this paragraph, a child must be the son or daughter of the military member.
 - (i) To arrange for alternative childcare when the covered active duty or call to covered active duty status of the military member necessitates a change in the existing childcare arrangement.
 - (ii) To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the covered active duty or call to covered active duty status of the military member.
 - (iii) To enroll in or transfer to a new school or day care facility a child of the military member when enrollment or transfer is necessitated by the covered active duty or call to covered active duty status of the military member.
 - (iv) To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors when such meetings are necessary due to circumstances arising from the covered active duty or call to covered active duty status of the military member.

- 6.1.5.4 Financial and legal arrangements. Leave required (i) to make or update financial or legal arrangements to address the military member's absence while on covered active duty or call to covered active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust and (ii) to act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the military member is on covered active duty or call to covered active duty status, and for a period of 90 days following the termination of the military member's covered active duty status.
- 6.1.5.5 Counseling. Leave to attend counseling provided by someone other than a health care provider, for oneself, for the military member, or for the son or daughter of the military member at the time that FMLA leave is to commence, provided that the need for counseling arises from the covered active duty or call to covered active duty status of the military member.
- 6.1.5.6 Rest and Recuperation. Leave to spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment. Leave taken for this purpose can be used for a period of 15 calendar days beginning on the date the military member commences each instance of Rest and Recuperation leave.
- 6.1.5.7 Post-deployment activities. Leave (i) to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member's covered active duty status and (ii) to address issues that arise from the death of the military member while on covered active duty status, such as meeting and recovering the body of the military member, making funeral arrangements, and attending funeral services.
- 6.1.5.8 Parental care. For purposes of leave for parental care listed in (i) through (iv) of this paragraph, the parent of the military member must be incapable of self-care (as defined in Section 5.10) in three or more of the activities of daily living, must be the military member's biological, adoptive, step, or foster father or mother, or any other individual who stood in loco parentis to the military member when the member was under 18 years of age, and the need to provide such care arises from the covered active duty or call to covered active duty status of the military member.
- (i) To arrange for alternative parental care when the covered active duty or call to covered active duty status of the military member necessitates a change in the existing care arrangement for the parent.
- (ii) To provide care for a parent of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis).

(iii) To admit to or transfer to a care facility a parent of the military member.

(iv) To attend meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member.

6.1.5.9 Additional activities. To address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the Town and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

6.2 Husband and Wife Shared Time Exceptions. Except as otherwise provided in Subsection 6.3.5, a husband and wife who are eligible for FMLA leave and are both employed by the Town may be limited to a combined total of 12 weeks of leave during any rolling 12-month period if the leave is taken to care for the employee's parent with a serious health condition, for the birth of the employee's son or daughter or to care for the child after the birth, or for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as a husband and wife are both employed by the Town. If one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 12 weeks of FMLA leave.

Where the husband and wife both use a portion of the total 12-week FMLA leave entitlement under this Section, the husband and wife would each be entitled to the difference between the amount he or she has taken individually and 12 weeks for FMLA leave for other purposes. For example, if each spouse took six weeks of leave to care for a parent, each could use an additional six weeks due to his or her own serious health condition or to care for a child with a serious health condition.

6.3 Military Caregiver Leave. An eligible employee is entitled to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a single 12-month period.

6.3.1 The single 12-month period begins on the first day the eligible employee takes FMLA leave and ends 12 months after that date, regardless of the method used by the Town to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during this single 12-month period, the remaining part of his or her 26 workweeks of leave entitlement is forfeited.

6.3.2 The leave entitlement described in this section is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered 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. When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the

single 12-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period.

- 6.3.3 An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period described in this section, provided that the employee is entitled to no more than 12 workweeks of leave for one or more of the following: because of the birth of a son or daughter of the employee and in order to care for such son or daughter; because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition; because of the employee's own serious health condition; or because of a qualifying exigency.

Example. An eligible employee may, during the single 12-month period, take 16 workweeks of FMLA leave to care for a covered servicemember and 10 workweeks of FMLA leave to care for a newborn child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the single 12-month period, even if the employee takes fewer than 14 workweeks of FMLA leave to care for a covered servicemember.

- 6.3.4 In all circumstances, including for leave taken to care for a covered servicemember, the Town is responsible for designating leave, paid or unpaid, as FMLA-qualifying, and for giving notice of the designation to the employee as provided in 29 CFR part 825.300. In the case of leave that qualifies as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition during the single 12-month period described in this section, the Town must designate such leave as leave to care for a covered servicemember in the first instance. Leave that qualifies as both leave to care for a covered servicemember and leave taken to care for a family member with a serious health condition during the single 12-month period must not be designated and counted as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition. As is the case with leave taken for other qualifying reasons, the Town may retroactively designate leave as leave to care for a covered servicemember pursuant to 29 CFR part 825.301(d).

- 6.3.5 A husband and wife who are eligible for FMLA leave and are employed by the Town may be limited to a combined total of 26 workweeks of leave during the single 12-month period if the leave is taken for 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. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as a husband and wife are employed by the Town. If one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 26 workweeks of FMLA leave.

6.4 Intermittent Leave or Reduced Leave Schedule. FMLA leave may be taken intermittently or on a reduced leave schedule (Section 5.12) under the guidelines described below. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks for military caregiver leave).

6.4.1 Medical necessity. For intermittent leave or leave on a reduced leave schedule taken because of one's own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or to care for a covered servicemember with a serious injury or illness, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. It may also be taken to provide care or psychological comfort to a covered family member with a serious health condition or a covered servicemember with a serious injury or illness.

6.4.1.1 Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or a pregnant employee may take leave intermittently for prenatal examinations or for her own condition, such as for periods of severe morning sickness. An example of an employee taking leave on a reduced leave schedule is an employee who is recovering from a serious health condition and is not physically able to work a full-time schedule.

6.4.2 Birth or placement. When leave is taken after the birth or placement of a healthy child, an employee may take leave intermittently or on a reduced schedule only if the employee and the Town mutually agree to a schedule of intermittent or reduced leave. All intermittent or reduced schedule leave under this subsection must be taken within one year after the birth or placement of a healthy child.

6.4.3 Transfer to alternative position. If an employee needs intermittent leave or leave on a reduced leave schedule for a qualifying event that is foreseeable the Town agrees to permit intermittent or reduced schedule leave. The Town may require the employee to transfer temporarily 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. (See, Personnel Policy 2-11, "Return to Work" regarding transitional work assignments).

7.0 STATUS, PAY AND BENEFITS

7.1 Employees taking leave under this policy will be returned to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the leave.

7.2 Employees must use all accrued compensatory and general leave time before taking the remainder of FMLA leave as leave without pay except as outlined in Section 7.3 below. (Employees who have exhausted all paid leave time may request emergency leave assistance as described under Personnel Policy 2-08, General Leave). Employees on paid leave will continue to accrue general leave in accordance with the Town's General Leave policy.

- 7.3 Disability leave and/or worker's compensation leave would be considered FMLA leave for a serious health condition and counted in the leave entitlement permitted under FMLA if the leave meets the criteria set forth in the FMLA and this policy. In such cases, the Town may designate the leave as FMLA leave and count the leave against the employee's FMLA leave entitlement.

Because leave pursuant to a disability benefit plan or a worker's compensation benefit is not unpaid, the provision for substitution of the employee's accrued paid leave is inapplicable, and neither the employee nor the Town may require the substitution of paid leave. However, the Town and the employee may agree, where state law permits, to have paid leave supplement the disability plan benefits or worker's compensation benefits, such as in the case where a plan or benefit only provides replacement income for a percentage of an employee's lost wages.

- 7.4 Eligible exempt employees utilizing leave for the reasons outlined in this FMLA policy who exhaust all paid leave will typically not have deductions in salaries made for absences less than one day. On the other hand, deductions will be made from exempt salaries for absences of a day or longer for employees who no longer have paid leave available. The Town reserves the right, within FMLA guidelines, to reduce the salary of an exempt employee who arranges an on-going, reduced work schedule and incurs absences of less than one day with no paid leave available without affecting the exempt status of the employee. *See*, 29 CFR part 825.206.
- 7.5 During periods of unpaid FMLA leave the employee must remit their shared cost of any health premiums or voluntary deductions to Human Resources. If the payment is more than 30 days late, the employee's benefit coverage may be dropped for the duration of the leave. Any remaining balance due will be subtracted from the employee's first paycheck upon their return to work. All contributions made by the Town to an employee's retirement system shall be suspended during unpaid leave. FMLA unpaid leave shall not be treated as a break in service for purposes of vesting and participation.
- 7.6 Service credit accruals and seniority continue to be governed by applicable rules.

8.0 EMPLOYEE NOTICE REQUIREMENTS

- 8.1 **Foreseeable FMLA Leave.** An employee must provide the Human Resources Benefits Technician (HR) and their department supervisor at least 30 days advance notice before FMLA leave is to begin. For foreseeable leave due to a qualifying exigency, notice must be provided as soon as practicable, regardless of how far in advance such leave is foreseeable. Whether FMLA leave is to be continuous or is to be taken intermittently or on a reduced schedule basis, notice need only be given one time, but the employee shall advise HR and their department supervisor as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. In those cases where the employee is required to provide at least a 30 day notice of foreseeable leave and does not do so, the employee shall explain the reasons why such notice was not practicable upon a request from HR for such information.

- 8.2 Unforeseeable FMLA Leave. When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to HR and their department supervisor as soon as practicable under the facts and circumstances of the particular case. Notice may be given by the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to do so personally.
- 8.3 Employee failure to provide notice. When leave is foreseeable and an employee fails to give timely advance notice with no reasonable excuse, the Town may delay FMLA coverage up to 30 days after the date the employee provides notice. When the need for FMLA leave is unforeseeable and an employee fails to give notice in accordance with 29 CFR part 825.303, the extent to which the Town may delay FMLA coverage for leave depends on the facts of the particular case.

9.0 CERTIFICATION

- 9.1 Forms and Filing Deadlines. All requests for FMLA leave shall be supported by a certification issued by the health care provider of the employee or the employee's family member or Department of Defense (DOD) via military orders. Employees shall provide HR with a complete and sufficient certification within 15 days of the request for the certification. Failure to provide a complete and sufficient certification may result in a denial of leave. After the employee has submitted the required certification, HR will designate eligibility for FMLA leave within five business days and advise the employee accordingly. The forms of the certifications shall be those developed by the DOL (available on the DOL website at www.dol.gov/whd/fmla/index.htm) and are as follows:
- 9.1.1 *Certification of Health Care Provider for Employee's Serious Health Condition – WH-380-E*
- 9.1.2 *Certification of Health Care Provider for Family Member's Serious Health Condition – WH-380-F*
- 9.1.3 *Certification of Qualifying Exigency For Military Family Leave – WH-384*
- 9.1.4 *Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave – WH-385*
- 9.1.5 *Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave – WH-385-V*
- 9.2 Clarification and Authentication. After the Town has given an employee the opportunity to cure any deficiencies in a certification, HR may contact the health care provider for purposes of clarification and authentication of the medical certification.

Clarification means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response. *Authentication* means providing the health care provider with a copy of the certification and requesting verification that the information contained on

the certification form was completed and/or authorized by the health care provider who signed the document. In no event shall additional medical information be requested by the Town.

If an employee chooses not to provide the Town with authorization allowing the Town to clarify and authenticate the certification with the health care provider and does not otherwise clarify the certification, the Town may deny the employee's request for FMLA leave. It is the employee's responsibility to provide the Town with a complete and sufficient certification and to clarify the certification if necessary.

- 9.3 Second and Third Opinions. If the Town has reason to doubt the validity of a medical certification, the Town may designate a health care provider to furnish a second opinion at the Town's expense. If the opinions of the employee's and the Town's designated health care providers differ, the Town may require the employee to obtain certification from a third health care provider, again at the Town's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the Town and the employee. The Town and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the Town does not attempt in good faith to reach agreement, the Town will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification.

Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the Act, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the Town's established leave policies.

- 9.4 Recertification. The Town may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless:

9.4.1 *More than 30 days.* If the medical certification indicates that the minimum duration of the condition is more than 30 days, the Town must wait until that minimum duration expires before requesting a recertification. In all cases, the Town may request a recertification of a medical condition every six months in connection with an absence by the employee even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months.

9.4.2 *Less than 30 days.* The Town may request recertification in less than 30 days if 1) the employee requests an extension of leave; 2) circumstances described by the previous certification have changed significantly (*e.g.*, the duration or frequency of the absence, the nature or severity of the illness, complications); or 3) the Town receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

- 9.5 Certification of Qualifying Exigency. The first time an employee requests leave because of a qualifying exigency, the Town may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service.

If an employee submits a complete and sufficient certification to support his or her request for leave, the Town may not request additional information from the employee. However, if the qualifying exigency involves meeting with a third party, the Town may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The Town also may contact an appropriate unit of the Department of Defense to request verification that a military member is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty).

- 9.6 Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave. When leave is taken to care for a covered servicemember with a serious injury or illness, the Town may require an employee to obtain a certification completed by an authorized health care provider of the covered servicemember. The certification process shall be in accordance with 29 CFR part 825.310.

10.0 RETURN TO WORK

- 10.1 Intent to return to work. The Town may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The Town's policy regarding such reports will not be discriminatory and will take into account all of the relevant facts and circumstances related to the individual employee's leave situation.
- 10.2 Fitness-for-duty certification. As a condition of restoring an employee whose FMLA leave was occasioned by the employee's own serious health condition, the Town may require the employee to obtain and present a certification from the employee's health care provider that the employee is able to resume work. A request for certification shall be in accordance with the Town's policies requiring all similarly-situated employees who take leave for such conditions to obtain and present certification from the employee's health care provider that the employee is able to resume work. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or providing sufficient authorization to the health care provider to provide the information directly to the Town) in the fitness-for-duty certification process as in the initial certification process. The cost of the certification shall be borne by the employee.
- 10.3 Failure to return to work. Failure of an employee to return to work on the established return date may result in termination of the employee as provided under the Town's job abandonment policy.