



# TOWN OF HILLSBOROUGH

## PERSONNEL POLICY

POLICY 116

CREATED 8/1/08

### **SUBJECT: FAMILY AND MEDICAL LEAVES**

**PURPOSE:** To provide family and medical leave as well as pregnancy disability leave in accordance with the requirements of state and federal law. To the extent allowed, leaves will be deemed to run concurrently.

### **STATEMENT OF POLICY:**

#### **1. Family and Medical Leave**

The Town will grant family and medical leave in accordance with the requirements of applicable state and federal law in effect at the time the leave is granted. Although the federal and state laws sometimes have different names, the Town refers to these types of leaves collectively as “FMLA Leave.” No greater or lesser leave benefits will be granted than those set forth in such state or federal laws. In certain situations, the federal law requires that provisions of state law apply. In any case, employees will be eligible for the most generous benefits available under applicable law. These policies are not intended to provide rights not otherwise included under applicable state and federal law.

Please contact your supervisor as soon as you become aware of the need for an FMLA Leave. Employees are expected to provide prompt notice to the Town of any change(s) to an employee’s return to work date. Accepting other employment, continuing to work in another job or filing for unemployment insurance benefits while on leave may be treated as a voluntary resignation from employment, unless you and the Town have agreed otherwise, in writing.

##### **a. Employee Eligibility**

To be eligible for FMLA Leave benefits, you must: (1) have worked for the Town for a total of at least 12 months; (2) have worked at least 1,250 hours over the previous 12 months as of the start of the leave; and (3) work at a location where at least 50 employees are employed by the Town within 75 miles, as of the date the leave is requested.

##### **b. Reasons for Leave**

State and federal laws allow FMLA Leave for various reasons. Because an employee’s rights and obligations may vary depending upon the reason for the FMLA

Leave, it is important to identify the purpose or reason for the leave. FMLA Leave may be used for one of the following reasons:

- (1) the birth, adoption or foster care of an employee's child within 12 months following birth or placement of the child ("Bonding Leave");
- (2) to care for an immediate family member (spouse, registered domestic partner, child or parent with a serious health condition ("Family Care Leave");
- (3) an employee's inability to work because of his/her own serious health condition ("Serious Health Condition Leave");
- (4) a "qualifying exigency" as defined under the FMLA, for military operations arising out of a spouse's, child's or parent's active duty or call to active duty as a member of the military reserves or National Guard in support of a "contingency operation" declared by the U.S. Secretary of Defense, President or Congress, as required by law ("Military Emergency Leave"); or
- (5) to care for a spouse, child, parent or next of kin (as defined under the FMLA)—who is an Armed Forces member (including the military reserves and National Guard) undergoing medical treatment, recuperation, therapy, is otherwise in an outpatient status or is otherwise on the temporary disability retired list—with a serious injury or illness incurred in the line of duty while on active duty that may render the individual medically unfit to perform his or her military duties ("Military Caregiver Leave").

**c. Length of Leave**

The maximum amount of FMLA Leave will be twelve (12) workweeks in any 12-month period when the leave is taken for: (1) Bonding Leave; (2) Family Care Leave; (3) Serious Health Condition Leave; and/or (4) Military Emergency Leave. However, if both spouses (or registered domestic partners) work for the Town and are eligible for leave under this policy, the spouses (or registered domestic partners) will be limited to a total of 12 workweeks off between the two of them when the leave is for Bonding Leave or to care for a parent using Family Care Leave. A 12-month period begins on the date of your first use of FMLA Leave. Successive 12-month periods commence on the date of your first use of such leave after the preceding 12-month period has ended.

The maximum amount of FMLA Leave for an employee wishing to take Military Caregiver Leave will be a combined leave total of twenty-six (26) workweeks in a single 12-month period. A "single 12-month period" begins on the date of your first use of such leave and ends 12 months after that date.

If both spouses work for the Town and are eligible for leave under this policy, the spouses will be limited to a total of 26 workweeks off between the two when the leave is for Military Caregiver Leave only or is for a combination of Military Caregiver Leave, Military Emergency Leave, Bonding Leave and/or Family Care Leave.

Under some circumstances, you may take FMLA Leave intermittently—which means taking leave in blocks of time, or by reducing your normal weekly or daily work schedule.

To the extent required by law, some extensions to FMLA Leave may be granted when the leave is necessitated by an employee's work-related injury/illness, a pregnancy related disability or a “disability” as defined under the Americans with Disabilities Act and/or applicable state or local law. In addition, in some circumstances and in accordance with applicable law, an extension to FMLA Leave may be granted when the leave is taken to care for a registered domestic partner and/or a registered domestic partner's child. Certain restrictions on these benefits may apply.

**d. Notice and Certification**

**(i) Bonding, Family Care, and Serious Health Condition Leave Requirements**

Employees may be required to provide:

1. 30-day advance notice when the need for the leave is foreseeable;
2. advance notice within one or two business days after learning of the need for leave when the leave is not foreseeable;
3. when the leave relates to medical issues, a completed Certification of Health-Care Provider form within 15 calendar days (these forms are available from Human Resources);
4. periodic recertification; and
5. periodic reports during the leave.

At the Town's expense, the Town may also require a second or third medical opinion regarding your own serious health condition. Employees are expected to cooperate with the Town in obtaining additional medical opinions that the Town may require.

When leave is for planned medical treatment, you must try to schedule treatment so as not to unduly disrupt the Town's operation. Please contact Human Resources prior to scheduling planned medical treatment.

**(ii) Military Emergency Leave**

Employees seeking to use Military Emergency Leave must provide the Town with as much notice of the need for leave as is reasonable and practical under the circumstances. In addition, the employee must provide the Town with a copy of the covered military member's active duty orders when the employee requests leave.

Employees may also be required to provide:

1. a description, signed by the employee, describing facts supporting the leave request and attaching any available documentation to show the need for the time away from work;

2. the approximate date the qualifying exigency commenced or will commence;
3. the beginning and ending dates for the absence, if the leave request is for a single period of time;
4. an estimate of the frequency and duration of the qualifying exigency, if the leave request is on an intermittent or reduced schedule basis; and
5. contact information for the third party or entity and a brief description of the purpose of the meeting, if the exigency involves a meeting with a third party or entity.

Absent unusual circumstances, certification of the need for leave must be provided to the Town within 15 calendar days of the Town's request for certification.

### **(iii) Military Caregiver Leave**

Employees may be required to provide:

1. 30-day advance notice when the need for the leave is foreseeable;
2. advance notice within one or two business days after learning of the need for leave when the leave is not foreseeable;
3. a completed Certification of Healthcare Provider form from the servicemember's authorized health care provider within 15 calendar days (these forms are available from Human Resources) or an invitational travel order or authorization;
4. confirmation of the family relationship with the servicemember; and
5. periodic reports during the leave.

Absent unusual circumstances, certification of the need for leave must be provided to the Town within 15 calendar days of the Town's request for certification.

### **(iv) Failure to Provide Certification and to Return from Leave**

Absent unusual circumstances, failure to comply with these notice and certification requirements may result in a delay or denial of the leave. If you fail to return to work at your leave's expiration and have not obtained an extension of the leave, the Town may presume that you do not plan to return to work and have voluntarily terminated your employment.

#### **e. Compensation During Leave**

Generally, FMLA Leave is unpaid. However, you may be eligible to receive benefits through State-sponsored or Town-sponsored wage-supplement benefit programs. If you are eligible to receive these benefits, you may also choose to supplement these benefits with the use of accrued vacation and sick leave, to the extent permitted by law and Town policy. All such payments will be integrated so that you will receive no more

than your regular compensation during this period. If you are not eligible to receive any of these wage-supplement benefits, the Town may require you to use accrued vacation and sick leave to cover some or all of the FMLA Leave. The use of paid benefits will not extend the length of a FMLA Leave.

**f. Benefits During Leave**

The Town will continue making contributions for your group health benefits during your leave on the same terms as if you had continued to work. This means that if you want your benefits coverage to continue during your leave, you must also continue to make any premium payments that you are now required to make for yourself or your dependents. The employee's contribution is due at the same time as it would be if made by payroll deduction. Employees taking Bonding Leave, Family Care Leave, Serious Health Condition Leave, and Military Emergency Leave will generally be provided with group health benefits for a 12 workweek period. Employees taking Military Caregiver Leave may be eligible to receive group health benefits coverage for up to a maximum of 26 workweeks. In some instances, the Town may recover premiums it paid to maintain health coverage if you fail to return to work following an FMLA Leave.

If you are on an FMLA Leave but are not entitled to continued paid group health insurance coverage, you may continue your coverage through the Town in conjunction with federal and/or state COBRA guidelines by making monthly payments for the amount of the relevant premium. Please contact Human Resources for further information.

Your length of service as of the leave will remain intact, but accrued benefits such as vacation and sick leave will not accrue while on an unpaid FMLA Leave.

**g. Job Reinstatement**

Under most circumstances, you will be reinstated to the same position held at the time of the leave or to an equivalent position with equivalent pay, benefits and other employment terms and conditions. However, you have no greater right to reinstatement than if you had been continuously employed rather than on leave. For example, if you would have been laid off had you not gone on leave, or if your position has been eliminated during the leave, then you will not be entitled to reinstatement.

Prior to being allowed to return to work, an employee wishing to return from a Serious Health Condition Leave must submit an acceptable release from a health care provider that certifies the employee can perform the essential functions of the job as those essential functions relate to the employee's serious health condition.

"Key employees," as defined by law, may be subject to reinstatement limitations in some circumstances. If you are a "key employee," you will be notified of the possible limitations on reinstatement at the time you request a leave.

**2. Pregnancy Disability Leave**

Pregnancy Disability Leave (PDL) as defined by the California Government Code, is available to an employee temporarily disabled by pregnancy, childbirth or a related medical condition. To the extent allowed, leave will be deemed to run concurrently with other leaves.

**a. Length of Pregnancy Disability Leave Allowed**

The maximum time eligible employees are allowed to take for Pregnancy Disability Leave is four (4) months in a 12 month period. Four months is defined as the number of days the employee would normally work within four calendar months. PDL begins on the first day the employee's health care provider certifies she is unable to work and ends when her health care provider certifies she is able to return to work or after a total of four months of leave, whichever occurs first. Under appropriate circumstances, leave may be taken on an intermittent or reduced work schedule.

**b. Medical Certification**

The Town requires medical certification from the employee's health care provider in the form of a Certification of Healthcare Provider. The Town may also require a second or third medical opinion regarding the employee's health condition at the Town's expense. Employees are required to cooperate with the Town in obtaining any medical opinions that are required. Where the need for leave is foreseeable, a minimum of thirty days notice shall be provided. If the need is not foreseeable or if circumstances change, notice must be provided as soon as practicable. Employees returning from leave must provide medical certification from the health care provider stating that the employee is qualified to return to work.

**c. Job Benefits and Protection**

PDL is unpaid leave. However, the Town may require employees to use accrued sick, vacation or holiday time during leave. Employees disabled due to pregnancy may receive disability pay under the Town's Long Term Disability plan, subject to certain limitations.

Employees absent due to pregnancy disability who are also eligible for FMLA shall receive health insurance coverage to the extent provided by the FMLA and applicable law. Pregnancy Disability Leave and FMLA run concurrently for the first twelve (12) workweeks. An employee returning from leave will generally be returned to the employee's same job; however, an employee has no greater right to reinstatement than if the employee had been continuously employed rather than on leave. If the employee does not return to his/her position as soon as he/she is able, the Town will consider the employee to have voluntarily resigned.