



TOWN OF HILLSBOROUGH

PERSONNEL POLICY

POLICY 116

REVISED 3/8/2021

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 the federal Family and Medical Leave Act (Fed-FMLA) and the California Family Rights Act (CFRA) 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.

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 during the previous 12 months immediately prior to 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. Fed-FMLA leave and CFRA leave run concurrently except for the following reasons: to care for a child without regard to age or dependency status, registered domestic partner, or a child of a registered domestic partner, grandparent, grandchild, or sibling (CFRA only) due to a serious health condition; incapacity due to pregnancy or prenatal care as a serious health condition (Fed-FMLA only); qualifying exigency leave as defined under the FMLA (Fed-FMLA only); qualifying exigency leave as defined under the CFRA (CFRA only) and military caregiver leave (Fed-FMLA only). Additionally, CFRA coverage for an employee's own serious health condition that also constitutes a disability under the California's Fair Employment and Housing Act (FEHA) is separate and distinct from FEHA protections. If the employee cannot return to work at the expiration of the CFRA leave, the Town will engage the employee in the interactive process to determine whether an extension of the leave would be a reasonable accommodation under the FEHA. 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, child, or parent and for CFRA Leave: registered domestic partner, child of a registered domestic partner, grandparent, grandchild, or sibling) 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, arising from a spouse's, child's or parent's "covered active duty" as a member of the military reserves, National Guard or Armed Forces or as defined under the CFRA, related to the covered active duty or call to covered active duty of an employee's spouse, domestic partner, child, or parent in the Armed Forces of the United States ("Military Emergency Leave"); or
- (5) to care for a spouse, child, parent or next of kin (nearest blood relative)—who is a "Covered Service Member"¹ ("Military Caregiver Leave").

¹ "Covered Servicemember" means (1) a member of the Armed Forces, including a member of a reserve component of the Armed Forces, 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 incurred or aggravated in the line of duty while on active duty that may render the individual medically unfit to perform his or her military duties; or (2) a person who, during the five years prior to the treatment necessitating the leave, served in the active military, Naval or Air Service, and who was discharged or released under conditions other than dishonorable (a "veteran" as defined by the Department of Veteran Affairs), and who has a qualifying injury or illness incurred or aggravated

c. Length of Leave

If the reason for leave is common to both Fed-FMLA and CFRA and, therefore running concurrently, the maximum amount of FMLA Leave will be 12 workweeks in any 12-month period. If the reason for leave is not common to both Fed-FMLA and CFRA and, therefore not running concurrently, then an eligible employee may be entitled to additional leave under applicable law. The applicable "12-month period" utilized by the Town is a rolling 12-month period measured backward from the date an employee uses his/her FMLA leave. Under this method, the 12-month period is measured backward from the day the employee uses any FMLA leave.

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.

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.

d. Intermittent or Reduced Schedule Leave

Under some circumstances, employees may take FMLA Leave intermittently, which means taking leave in blocks of time or reducing the employee's normal weekly or daily work schedule. An employee may take leave intermittently or on a reduced schedule whenever it is medically necessary to care for the employee's child, parent or spouse with a serious health condition or because the employee has a serious health condition. The medical necessity of the leave must be determined by the health care provider of the person with the serious health condition.

Intermittent or reduced schedule leave may also be taken for absences where the employee or his or her family member is incapacitated or unable to perform the essential functions of the job because of a chronic serious health condition, even if the person does not receive treatment by a health care provider.

Leave due to military exigencies may also be taken on an intermittent basis.

Leave taken intermittently may be taken in increments of no less than four hours. Employees who take leave intermittently or on a reduced work schedule basis for planned medical treatment must make a reasonable effort to schedule the leave so as not to unduly disrupt the Town's operations. Please contact Human Resources prior to scheduling medical treatment. If FMLA Leave is taken intermittently or on a

in the line of duty while on active duty that manifested itself before or after the member became a veteran.

reduced schedule basis due to planned medical treatment, we may require employees to transfer temporarily to an available alternative position with an equivalent pay rate and benefits, including a part-time position, to better accommodate recurring periods of leave.

If an employee using intermittent leave or working a reduced schedule finds it physically impossible to start or stop work mid-way through a shift in order to take CFRA leave and is therefore forced to be absent for the entire shift, the entire period will be counted against the employee's CFRA entitlement. However, if there are other aspects of work that the employee is able to perform that are not physically impossible, then the employee will be permitted to return to work, thereby reducing the amount of time to be charged to the employee's CFRA entitlement.

CFRA leave for Bonding Leave does not have to be taken in one continuous period of time, but the minimum duration is two weeks. However, the Town will grant a request for CFRA leave lasting less than two weeks' twice during the 12-week period. Additional requests for Bonding Leave lasting less than two weeks may be directed to Human Resources and will be considered on a case-by-case basis depending on the needs of the Town. If the request is granted, the Town may require the employee to transfer temporarily to an available alternative position. Bonding Leave must be concluded within one year of the birth or placement of the child.

If employees have been approved for intermittent leave and they request leave time that is unforeseeable, they must specifically reference either the qualifying reason for leave or the need for FMLA Leave at the time they call off.

e. Notice and Certification

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

Employees may be required to provide:

1. When the need for the leave is foreseeable, 30 days' advance notice or such notice as is both possible and practical if the leave must begin in fewer than 30 days (normally this would be the same day the employee becomes aware of the need for leave or the next business day);
2. When the need for leave is not foreseeable, notice within the time prescribed by the Town's normal absence reporting policy, unless unusual circumstances prevent compliance, in which case notice is required as soon as is otherwise possible and practical;
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) and for Military Caregiver Leave, an

invitational travel order or invitational travel authorization may be submitted in lieu of a Certification of Health Care Provider form;

4. Periodic recertification (as allowed by law); and
5. Periodic reports during the leave.

In addition to other notice provisions, employees requesting leave for CFRA qualifying reasons must respond to any questions designed to determine whether an absence is potentially qualifying for leave under this policy. Failure to respond to permissible inquiries regarding the leave request may result in denial of CFRA leave protections. Similarly, an employee or the employee's spokesperson may be required to provide additional information needed to determine whether a requested leave qualifies for Fed-FMLA protections. An employee's failure to adequately explain the reason for the leave may result in the denial of Fed-FMLA protections.

Certification forms are available from Human Resources. At the Town's expense, we may require a second or third medical opinion regarding the employee's own serious health condition for Fed-FMLA purposes and, for CFRA purposes, the employee's own serious health condition or the serious health condition of an employee's family member. In limited cases, we may require a second or third opinion regarding the injury or illness of a Covered Servicemember. Employees are expected to cooperate with the Town in obtaining additional medical opinions that we may require.

When leave is for planned medical treatment, employees 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.

If an employee does not produce the certification as requested, the FMLA leave will not be protected.

(ii) Military Emergency Leave

Employees are required to provide:

1. As much advance notice as is reasonable and practicable under the circumstances;
2. A copy of the covered servicemember's active duty orders when the employee requests leave and/or documentation (such as Rest and Recuperation leave orders) issued by the military setting forth the dates of the servicemember's leave; and
3. A completed Certification of Qualifying Exigency form within 15 calendar days, unless unusual circumstances exist to justify providing the form at a later date.

Certification forms are available from Human Resources.

(iii) Recertifications After Grant of Leave

In addition to the requirements listed above, if an employee's Fed-FMLA leave is certified, the Town may later require medical recertification in connection with an absence that the employee reports as qualifying for Fed-FMLA leave. For example, the Town may request recertification if (1) the employee requests an extension of leave; (2) the circumstances of the employee's condition as described by the previous certification change significantly (e.g., employee absences deviate from the duration or frequency set forth in the previous certification; employee's condition becomes more severe than indicated in the original certification; employee encounters complications); or (3) the Town receives information that casts doubt upon the employee's stated reason for the absence. In addition, the Town may request recertification in connection with an absence after six months have passed since the employee's original certification, regardless of the estimated duration of the serious health condition necessitating the need for leave. Any recertification requested by the Town will be at the employee's expense.

In addition to the requirement listed above, a recertification under the CFRA may only be requested at the expiration of the time period in the original certification for time off for the employee's own serious health condition.

If an employee does not produce the recertification as requested, the leave will not be CFRA protected.

(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.

f. 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. If you elect to have wage-replacement benefits and accrued paid leave integrated, all such payments will be integrated so that you will receive no more than your regular compensation during this period. The Town may require employees to use accrued vacation and sick leave to cover some or all of the FMLA Leave to the extent permissible under applicable law. The use of paid benefits will not extend the length of a FMLA Leave.

g. 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. Your contribution is due at the same time as it would be if made by payroll deduction. Employees taking leave for a reason that is common to both Fed-FMLA and CFRA and, therefore, leave is running concurrently, will generally be provided with group health benefits for a 12-workweek period. When employees take leave for a reason that is not common to both Fed-FMLA and CFRA and, therefore, leave is running consecutively, the Town will continue the employee's health insurance benefits for up to a maximum of 12 workweeks in a 12-month period during each applicable leave. 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.

h. 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.

For Fed-FMLA purposes only, "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 and Pregnancy-Related Disabilities Leave and Accommodation

a. Pregnancy Disability Leave

Any employee who is disabled by pregnancy, childbirth or a related medical condition (including medical conditions relating to lactation) is eligible for up to four months of pregnancy disability leave. If an employee is also eligible for leave under the federal Family and Medical Leave Act (Fed-FMLA), the Fed-FMLA leave and the pregnancy disability leave will run concurrently.

For purposes of this policy, employees are "disabled by pregnancy" when, in the opinion of their health care provider, they cannot work at all or are unable to perform any one or more of the essential functions of their job or to perform them without undue risk to themselves, the successful completion of their pregnancy or other persons as determined by a health care provider. The term "disabled" also applies to certain pregnancy-related conditions, such as severe morning sickness or the need to take time off for prenatal or postnatal care, bed rest, post-partum depression and the loss or end of pregnancy (among other pregnancy-related conditions that are considered to be disabling).

b. Reasonable Accommodation for Pregnancy-Related Disabilities

Any employee who is affected by pregnancy may also be eligible for a temporary transfer or another accommodation. Employees are "affected by pregnancy" if they are pregnant or have a related medical condition and their health care provider has certified that it is medically advisable for the employee to temporarily transfer or to receive some other accommodation.

The Town will provide a temporary transfer to a less-strenuous or -hazardous position or duties or other accommodation to an employee affected by pregnancy if:

- The employee requests a transfer or other accommodation;
- The request is based upon the certification of a health care provider as "medically advisable"; and
- The transfer or other requested accommodation can be reasonably accommodated pursuant to applicable law.

No additional position will be created, and the Town will not terminate another employee, transfer another employee with more seniority, or promote or transfer any employee who is not qualified to perform the new job as a part of the accommodation process.

Examples of reasonable accommodations include: (1) modifying work schedules to provide earlier or later hours; (2) modifying work duties, practices or policies; (3)

providing time off; (4) providing furniture (such as stools) and modifying equipment and devices; and (5) providing additional break time for lactation or trips to the restroom. If time off or a reduction in hours is granted as a reasonable accommodation, the Town will consider the reduced hours/time off as pregnancy disability leave and deduct those hours from an employee's four-month leave entitlement.

c. Advance Notice and Medical Certification

To be approved for a pregnancy disability leave of absence, a temporary transfer or other reasonable accommodation, employees must provide the Town with:

- 30 days' advance notice before the leave of absence, transfer or reasonable accommodation is to begin, if the need is foreseeable;
- As much notice as is practicable before the leave, transfer or reasonable accommodation when 30 days' notice is not possible; and
- A signed medical certification from their health care provider that states that they are disabled due to pregnancy or that it is medically advisable for them to be temporarily transferred or to receive some other requested accommodation.

The Town may require employees to provide a new certification if they request an extension of time for their leave, transfer or other requested accommodation.

Failure to provide the Town with reasonable advance notice may result in the delay of leave, transfer or other requested accommodation.

d. Duration

The Town will provide employees with pregnancy disability leave for a period not to exceed four months. The four months is defined as the number of days (and hours) the employee would normally work within four calendar months or 17.33 workweeks. This leave may be taken intermittently or on a continuous basis, as certified by the employee's health care provider.

The Town may require an employee to temporarily transfer to an available alternative position to meet the medical need of the employee to take intermittent leave or work on a reduced schedule as certified by the employee's health care provider. The employee must be qualified for the alternative position, which will have an equivalent rate of pay and benefits, but not necessarily equivalent job duties.

Any temporary transfer or other reasonable accommodation provided to an employee affected by pregnancy will not reduce the amount of pregnancy disability leave time the employee has available unless the temporary transfer or other reasonable

accommodation involves a reduced work schedule or intermittent absences from work.

The length of the transfer will depend upon the employee's physical condition before and after childbirth.

e. Benefits

The Town will maintain an employee's health insurance benefits during an employee's pregnancy disability leave for a period of up to four months (as defined above) on the same terms as they were provided prior to the leave time. If employees take additional time off following a pregnancy disability leave that qualifies as leave under the California Family Rights Act (CFRA), the Town will continue their health insurance benefits for up to a maximum of 12 workweeks in a 12-month period.

In some instances, the Town may recover premiums it paid to maintain health insurance benefits if an employee fails to return to work following pregnancy disability leave for reasons other than taking additional leave afforded by law or Town policy or not returning due to circumstances beyond the employee's control.

f. Integration With Other Benefits

Pregnancy disability leaves and accommodations that require employees to work a reduced work schedule or to take time off from work intermittently are unpaid. Employees may use their accrued vacation, sick or other paid time off (PTO) benefits during the unpaid leave of absence, if applicable. However, use of sick, vacation or other PTO benefits will not extend the available leave of absence time. Sick, vacation and other PTO leave hours will not accrue during any unpaid portion of the leave of absence, and employees will not receive pay for official holidays that are observed during their leave of absence except during those periods when they are substituting vacation or sick leave for unpaid leave.

Any State Disability Insurance for which employees are eligible may be integrated with accrued vacation, sick leave or other PTO benefits so that they do not receive more than 100 percent of their regular pay.

g. Reinstatement

If the employee and the Town have agreed upon a definite date of return from the leave of absence or transfer, the employee will be reinstated on that date if they notify the Town that they are able to return on that date. If the length of the leave of absence or transfer has not been established, or if it differs from the original agreement, the employee will be returned to work within two business days, where feasible, after notifying the Town of their readiness to return.

Before employees will be allowed to return to work in their regular job following a leave of absence or transfer, they must provide Human Resources with a certification from their health care provider that they can perform safely all of the essential duties of the position, with or without reasonable accommodation. If employees do not provide such a release prior to or upon reporting for work, they will be sent home until a release is provided. This time before the release is provided will be unpaid.

Employees will be returned to the same position upon the conclusion of their leave of absence or transfer unless the position ceases to exist. In cases where the employee's position no longer exists, the Town will provide a comparable position on the scheduled return date or within 60 calendar days of that return date. However, employees will not be entitled to any greater right to reinstatement than if they had not taken the leave.

To the extent required by law, some extensions beyond an employee's pregnancy disability leave entitlement may be granted when the leave is necessitated by an employee's injury, illness or "disability" as defined under the Americans with Disabilities Act and/or applicable state or local law.

The Town will not discriminate or retaliate against employees because they request or make use of leave, a transfer or other accommodations in accordance with this policy. This policy does not limit a pregnant employee's rights under any other policy or laws protecting gender, pregnancy and childbirth, or health conditions related to pregnancy or childbirth.

Employees who have questions about this policy or who wish to request leave, transfer or other reasonable accommodation under this policy should contact Human Resources.

Created 8/1/2008