

TOWN OF CONCORD  
Personnel Policy and Procedure #18

**Unpaid Leaves of Absence and FMLA**

Issued: 1993

*Supersedes PPP #11-5 dated 5/82 and PPP #18 dated 8/92*

**I. Purpose and Scope**

The purpose of this document is to establish policies and procedures for the administration of Section 18 of the Personnel Bylaws regarding unpaid leaves of absence. It shall apply to all unpaid leaves of absence granted to employees. Employees subject to collective bargaining agreements with the Town are subject only to those provisions of this PPP which are not covered in their collective bargaining agreement. Under all circumstances, the Town will comply with provisions of the federal Family and Medical Leave Act (FMLA) and all other related federal or state laws and regulations.

**II. Definition of Unpaid Leave of Absence**

An unpaid leave of absence is any absence from an employee's regular work schedule for which no paid leave time is used and for which the employee has been granted an approved unpaid leave of absence by the Town Manager.

**III. Job & Benefit Protection/Restoration**

When an unpaid leave of absence is granted, it is with the understanding that, when economic conditions warrant, the employee will be restored to his or her original job with the Town, or to a position of equivalent pay, benefits, and other employment terms and conditions at the conclusion of the leave. In addition, leave will not result in loss of any employment benefits the employee earned or was entitled to prior to taking leave.

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to Town operations, the Town may refuse to reinstate certain "key" employees after using FMLA leave (defined below). A "key" employee is a salaried "eligible" employee of the Town who is among the highest paid ten percent of employees. The Town will notify the employee of his/her status as a "key" employee in response to the employee's notice of intent to take FMLA leave.

**IV. Family and Medical Leave**

The Town Manager will grant leave in accordance with FMLA. Provisions adopted by the Town of Concord for granting such leave are as follows:

A. Eligibility for Leave

To be eligible for FMLA leave, an employee must:

- have been employed by the Town for at least twelve months; and
- must have provided at least 1,250 hours (25 hours per week) of service during the twelve months immediately preceding the leave request.

## B. Leave Entitlement

Eligible employees will be granted up to a total of 12 work-weeks of leave (unpaid or paid) during any calendar year for one or more of the following reasons:

- to care for the employee's child after birth, adoption, or placement for foster care;
- to care for the employee's immediate family member who has a serious health condition (definitions of immediate family member which apply include both FMLA - spouse, child, or parent - and the Town's PPP#11.2-1); or
- the employee is unable to perform the functions of his or her job due to a serious health condition.

If a husband and wife are both employees of the Town and eligible for FMLA leave, they are jointly entitled to a **combined** total of 12 work-weeks of family leave for the birth or placement of a child for adoption or foster care.

FMLA leave may be taken intermittently whenever it is medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work. If the need for intermittent leave is foreseeable based on planned medical treatment, the employee is responsible for scheduling the treatment in a manner that does not unduly disrupt the Town's operations, subject to the approval of the health care provider. In such cases, the Town may also transfer the employee temporarily to an alternative job with equivalent pay and benefits that better accommodates recurring periods of leave than the employee's regular job.

Intermittent leave for the purposes of caring for a child after birth, adoption, or placement for foster care will be permitted at the Town Manager's discretion based upon the ability of the Town to make accommodations for such leave.

Leave for birth, adoption, or foster care placement, must conclude within 12 months of the birth or placement. This applies both to leave taken sequentially or intermittently.

When medical treatment can be planned in advance, the employee must attempt to schedule treatment so that it will not unduly disrupt the Town's operation.

## C. Definition of Serious Health Condition

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;
- any period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or,
- continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days, and for prenatal care.

## D. Notice of Intent to Use FMLA Leave & Approval Process

In order to plan for the provision of quality, uninterrupted service to the Town, an employee who wishes to use FMLA leave must submit a written notice to his/her department head at least thirty (30) days prior to any anticipated leave. If the need for leave is not foreseeable, the employee must provide notice as soon as practicable. Failure to provide

such advance notice may result in a denial of the leave request until 30 days after the notice is provided to the Department Head.

The Department Head shall forward any request for an unpaid leave of absence to the Town Manager with appropriate information and a recommendation immediately upon notice by the employee. No employee may commence an unpaid leave of absence without authorization from the Town Manager.

The Town Manager will approve leave which qualifies under the Family and Medical Leave Act. If it is determined that the employee is not qualified for FMLA leave, the Town Manager will consider the request as described under Section V of this policy, "Other Leaves of Absence."

Employees seeking to use FMLA leave will be required to provide certification from a health care provider to substantiate any leave due to the serious health condition of the employee or his/her immediate family member. The form for obtaining such certification may be found as Attachment A of this policy. Failure to provide such certification will result in a denial of the leave request until the employee provides the requested certification. The Town may require, at its own expense, second or third medical opinions of an employee's need for FMLA leave.

The Town may require re-certification every 30 days, or due to the following:

- the employee requests an extension of leave;
- circumstances described by the original certification have changed significantly; or
- the Town receives information that casts doubt upon the continuing validity of the certification.

The Town may require periodic reports during FMLA leave on the employee's status and intent to return to work.

#### E. Use of Accrued Paid Leaves in Relation to FMLA

**Any paid leave time taken in connection to a situation which entitles an employee to FMLA leave will be applied toward the 12 week leave entitlement.** Employees may use any accrued vacation and personal time while on FMLA leave. Use of accrued sick time in relation to FMLA will be permitted as follows:

- absences due to the employee's own serious health condition:  
employees will be required to use all of their accrued sick leave before being placed on unpaid status
- absences due to an immediate family member's serious health condition:  
employees will be required to use a minimum of five (5) sick days per fiscal year as "family sick leave" before being placed on unpaid status - use of more than five (5) days of sick leave to care for an immediate family member may be permitted by the Town Manager
- absences for the purposes of caring for a child at the time of birth, or placement for adoption or foster care:  
employees will not be required to use any paid leave time in order to be placed on unpaid leave (Mass. maternity law)<sup>1</sup>

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<sup>1</sup> Note from Human Resources Director: If an employee *wishes* to use sick leave after the birth of a child, a doctor's note must be submitted to confirm the exact dates that the employee is medically unable to work. Sick leave may *only* be for periods of absence which are medically necessary.

#### F. Reinstatement

Prior to reinstatement, an employee who takes leave for their own serious health condition must obtain and present certification from a health care provider that the employee is able to resume work. Failure to provide such certification will result in a denial of reinstatement until the employee provides the requested certification.

### V. Other Leaves of Absence

Unpaid leaves of absence not covered under FMLA may be granted at the discretion of the Town Manager as follows:

#### A. Approval

Requests for leaves of absence must be submitted in writing by the employee to his/her department head, stating the purpose of the leave and the expected dates of absence. Requests must be made at least thirty (30) days prior to the start of the leave. If the need for leave is not foreseeable, the employee must make the request as soon as practicable. Failure to provide such advance notice may result in a denial of the leave request until 30 days after the notice is provided to the Department Head.

The Department Head shall forward any request for an unpaid leave of absence to the Town Manager with appropriate information and a recommendation immediately upon notice by the employee. No employee may commence an unpaid leave of absence without authorization from the Town Manager.

The granting or denying of any leave of absence will be based on the reason for the leave, the employee's length of service with the Town, the impact of the leave on Town operations, the expectation of the employee's return at the conclusion of the leave, and any other considerations the Town Manager may find relevant.

#### B. Use of Accrued Paid Leaves Prior to Unpaid Leaves of Absence

As a condition of being granted all forms of unpaid leave which are not defined as FMLA leave, employees will be required to use all of their accrued vacation and personal leave before being placed on unpaid status.

### VI. Benefits While on Unpaid Leave

Leave and insurance benefits for an employee on an unpaid leave of absence shall be as follows:

#### A. Leave Accruals

Unpaid leaves of absence of thirty (30) calendar days or less shall not affect an employee's leave accruals. However, after the thirtieth (30th) calendar day of an unpaid leave of absence, the employee will not accrue additional vacation, sick, or personal leave. If an employee has more than one unpaid leave for the same purpose, the 30 calendar days shall be counted on an accumulated basis.

## B. Service Credit

Unpaid leaves of absence of thirty (30) calendar days or less shall not affect an employee's service credit. However, no service credit shall be earned by an employee after the thirtieth (30th) calendar day of an unpaid leave of absence. Therefore, an employee's anniversary date (for purposes of step increases, longevity pay, vacation accrual, and other service related policies) will be postponed by the number of calendar days beyond thirty (30) that the employee is on unpaid leave of absence. (The adjusted anniversary date should be shown on the Change of Status form processed for the employee's return to work.) If an employee has more than one unpaid leave for the same purpose, the 30 calendar days shall be counted on an accumulated basis.

## C. Holiday Pay

No holiday pay shall be granted to an employee who is on unpaid leave of absence on the last working day before the holiday or the first working day after the holiday.

## D. Insurance

All insurance benefits may be maintained by employees during leaves of absence of twelve (12) weeks or less. When an unpaid leave of absence lasts longer than twelve weeks, Long-Term Disability benefits will terminate at the end of the twelve week period.

In order to maintain coverage, employees must pay the Town directly for their insurance premiums. Payments will be due by the first of each month in which the employee is to be covered. If payments have not been received within 30 days of the date on which they were due, the Town will proceed to cancel the employee's insurance coverage.

When an employee is on an unpaid leave of absence under FMLA, the Town will continue to contribute toward the employee's insurance premiums during the full period of the unpaid leave. However, if, under controllable circumstances, the employee fails to return to work at the end of the leave period he/she will be expected to reimburse the Town for the co-payments made toward the employee's insurance premiums during the leave.

When an employee is on unpaid leave due to reasons other than FMLA, the Town shall pay its usual contribution toward insurance premiums for coverage during the first 60 calendar days. However, employees will be required to pay 100% of their insurance premiums for coverage after the sixtieth (60th) calendar day. If, under controllable circumstances, the employee fails to return to work at the end of the leave period, he/she will be expected to reimburse the Town for the co-payments made toward the employee's insurance premiums during the first sixty (60) days of leave.

## E. Retirement Creditable Service Accrual

Unpaid leaves of absence of up to one month will not affect the creditable service accrual for Members of the Concord Contributory Retirement System. However, creditable service may not be accrued for any unpaid leave in excess of one month.