



TOWN of BROOKLINE

Massachusetts

FAMILY AND MEDICAL LEAVE POLICY

STATEMENT OF POLICY

The policy of the town of Brookline is to conform to the Family Medical Leave Act (FMLA) and any regulations promulgated thereto; if there are any omissions or conflicts between this policy and the FMLA, the provisions of the FMLA will govern.

In accordance with the Family and Medical Leave Act, the Town of Brookline will grant job protected unpaid family and medical leave to eligible male or female employees for up to 12 work weeks per 12-month period for any one or more of the following reasons:

- A. The birth of a child and in order to care for such child or the placement of a child with the employee for adoption or foster care (leave for this reason must be taken within the 12-month period following the child's birth or placement with the employee); or
- B. In order to care for a spouse, child or parent of the employee if the spouse, child or parent has a serious health condition; or
- C. The employee's own serious health condition that makes the employee unable to perform the functions of his/her position.

If the town is made aware of a need for FMLA leave and the employee has not yet requested it, the Town will initiate implementation of the FMLA for the employee.

DEFINITIONS

- A. "12-Month Period" – means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
- B. "Spouse" – is a wife or husband. If both spouses work for the Town of Brookline, their total leave in any 12-month period may be limited to an aggregate of 12 weeks if the leave is taken for either the birth or placement for adoption or foster care of a child or to care for a sick parent.
- C. "Child" – means a son or daughter under 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's "child" is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster or step-child, a legal ward, or a child of a person standing in loco parentis.
- D. "Serious Health Condition" – means an illness, injury, impairment, or a physical or mental condition that involves:
 - 1. Inpatient care in a hospital, hospice, or residential medical care facility; or
 - 2. Any period of incapacity requiring absence from work for more than three calendar days AND that involves continuing treatment by a health care provider; or

3. Continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or which, if left untreated, would likely result in a period of incapacity of more than three calendar days; or
4. Prenatal care by a health care provider or any period of incapacity due to pregnancy.

E. "Continuing Treatment" – means:

1. Two or more visits to a health care provider; or
2. Two or more treatments by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a health care provider (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
3. A single visit to a health care provider that results in a regimen of continuing treatment; or
4. In the case of a serious, long-term or chronic condition or disability that cannot be cured, being under the continuing supervision of, but not necessarily being actively treated by, a health care provider.

COVERAGE AND ELIGIBILITY

A. To be eligible for family/medical leave an employee must:

1. Be an employee of the Town of Brookline;
2. Have worked for the Town for at least 12 months; and
3. Have worked at least 1250 hours over the previous 12 month period.

INTERMITTENT OR REDUCED LEAVE

A. An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule to care for a spouse, parent, or child with a serious health condition or because of a serious health condition of the employee when "medically necessary."

1. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.
2. The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

B. An employee may not take leave intermittently or on a reduced leave schedule for birth or placement for adoption or foster care of a child or the care of such a child, unless the employer and the employee agree otherwise.

C. For part-time employees and those who work variable hours, the family and medical leave entitlement is calculated on the basis of a weekly average of the hours worked over the 12-weeks prior to the beginning of the leave. Part-time employees must satisfy

the requirement to have worked 12 months and 1250 hours previous to the request.

SUBSTITUTION OF PAID LEAVE TIME

- A. As provided for in the FMLA, an employee will be required to utilize accrued paid leave time under existing provisions for such leaves for any part of a family/medical leave. For leave taken for the employee's illness, the employee will be required to use sick, vacation, and personal leave time. For leave taken to care for another, the employee will be required to use vacation and personal leave time. Additionally, an employee may use up to seven days of his/her own sick leave in the event of serious illness in the employee's immediate family, as defined by the applicable provision of an employee's collective bargaining agreement, (three and half days for Firefighters) or in the case of non-union employees, section twelve of the policies governing sick leave use as it appears in the special provisions of the classification and pay plan. In such cases, FMLA leave will run concurrently with the paid leave.
- B. When an employee has used accrued paid vacation or personal time for a portion of family/medical leave, the employee may request an additional period of unpaid leave to be granted so that the total of paid and unpaid leave provided equals 12 weeks.

NOTICE REQUIREMENT

- A. An employee is required to give 30 days notice in the event of a foreseeable leave. A "Request for Family/Medical Leave" form (see attached) should be completed by the employee and returned to his/her Department Head. In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable, usually verbal notice within one or two business days of when the need for leave becomes known, followed by a completed "Request for Family/Medical Leave" form. If the employee is unable to give notice due to a serious health condition, a spouse or other family member may give such notice.
- B. If an employee fails to give 30 days notice for a foreseeable leave with no reasonable excuse for the delay, the leave may be denied until 30 days after the employee provides notice.

MEDICAL CERTIFICATION

- A. For leaves taken because of the employee's or a covered family member's serious health condition, the employee must submit a completed "Physician or Practitioner Certification" form (see attached) and return the certification to his/her Department Head. Medical certification must be provided by the employee within 15 days after requested, or as soon as is reasonable possible. Where the leave is foreseeable and at least 30 days notice has been provided, the employee should provide the medical certification before the leave begins.
- B. The Town of Brookline may require a second or third opinion at the Town's expense as provided below:

Second Opinion

In any case in which the employer has reason to doubt the validity of the certification provided in Section A above for leave because of a serious health condition of the employee or to care for the spouse, child or parent of the employee with a serious health condition, the employer may require, at the expense of the employer, that the eligible employee obtain the opinion of a second health care provider designated or approved by the employer concerning any information certified for such leave.

Third Opinion

In any case in which the second opinion described above differs from the opinion in the original certification, the employer may require, at the expense of the employer, that the employee obtain the opinion a third health care provider designated or approved jointly by the employer and the employee concerning the information certified for such leave.

The opinion of the third health care provider concerning the information certified for such leave shall be considered to be final and shall be binding on the employer and the employee.

- C. The Town may require periodic medical reports on the employee's status and periodic statements of the employee's intent to return to work in accordance with the regulations promulgated pursuant to the FMLA, 29 CFR 825, 308 and 825.309.
- D. The Town may require an employee whose FMLA leave was caused by his/her own serious health condition to present a fitness for duty letter from the employee's health care provider and to be examined by a physician selected by the Town prior to returning to work. This is subject to the ADA (Americans with Disabilities Act) and any applicable collective bargaining agreement.
- E. All documentation related to the employee's or family member's medical condition will be held in strict confidence. Medical reports will be forwarded to the Nurse Case Manager in the Human Resources Office and maintained in the employee's medical records file in accordance with the law and business practice.
- F. Any periodic recertification will comply with FMLA and Department of Labor regulations.

EFFECT ON BENEFITS

- A. An employee granted a leave under this policy will continue to be covered under the Town of Brookline's group health insurance plan, and life insurance plan under the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period.
- B. The employee's premium contributions will be required either through payroll deduction or by direct payment to the Town of Brookline. The employee will be advised in writing prior to taking leave period as to the amount and method of payment. Employee contribution amounts are subject to any change in rates that occurs while the employee is on leave.
- C. If an employee's contribution is more than 30 days late, the Town of Brookline may terminate the employee's insurance coverage upon 15 days written notice to the employee and in accordance with Town policy and COBRA requirements.
- D. If the Town of Brookline pays any employee contributions missed by the employee while on leave, the employee will be required to reimburse the Town for such payments (on a payroll deduction schedule) upon return from leave. The employee will be required to sign a written statement prior to taking leave authorizing the payroll deduction or other means of recovery for such payments.
- E. If the employee fails to return from unpaid family/medical leave for reasons other than (1) the continuation of a serious health condition of the employee or a covered family member or (2) circumstances beyond the employee's control (certification required

within 30 days of failure to return for either reason), the Town of Brookline may seek reimbursement from the employee for the portion of the health insurance premiums paid by the Town of Brookline on behalf of that employee (also known as the Town contribution) during the period of leave. *

- F. An employee is not entitled to seniority or benefit accrual, subject to the Town's established policies and any applicable collective bargaining agreements, during periods of unpaid leave but will not lose anything accrued prior to leave.
* Note: Where the employee uses paid leave as all/part of his FMLA leave, the employer may not recover its share of health insurance premiums for any period of FMLA leave covered by paid leave.

JOB PROTECTION

- A. If the employee returns to work within 12 weeks following a family/medical leave, he/she will be reinstated to his/her former position or an equivalent position with equivalent pay, benefits, and other terms and conditions of employment.
- B. The employee's restoration rights are the same as they would have been had the employee not been on leave. Thus, if the employee's position would have been eliminated or the employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from leave.
- C. If the employee fails to return within 12 weeks following the commencement of a family/medical leave, the employee may be reinstated to his/her same or similar position, only if available, in accordance with applicable laws. If the employee's same or similar position is not available, the employee may be terminated.

FAMILY/ MEDICAL LEAVE FORMS TO BE SUBMITTED BY THE EMPLOYEE

At the time of request for leave:

- Request for Family/Medical leave
- Physician or Practitioner Certification: Family Member/Serious Health Condition
Employee/Serious Health Condition
- Authorization for Payroll Deduction for Benefit Plan Coverage Continuation During Family/Medical Leave of Absence

At the time of Return from Leave:

- Fitness for Duty Certification



TOWN of BROOKLINE
Massachusetts

REQUEST FOR FAMILY/MEDICAL LEAVE

Employee Name: _____ Date of Request: _____

Department: _____ Position Title: _____

Hire Date: _____ Dept Head Signature: _____

I request a Family/Medical Leave for the following reason (check one):

- A. The birth of a child and in order to care for such child or the placement of a child for adoption or foster care.
B. Employee's own serious health condition that makes the employee unable to perform the functions of his/her position...
C. In order to care for an immediate family member if such family member has a serious health condition...
D. Leave to care for a covered military service member with a serious injury or illness...
E. Leave to address qualifying exigencies in support of a spouse, son, daughter or parent on active duty...

Method of Leave Requested

- A. Consecutive Leave
B. Intermittent or Reduced Leave Schedule (Specify Schedule Below)

Date leave is to begin: _____ Expected duration of leave: _____

Employee Signature

Date

Return completed form, with department head signature, to Human Resources, Room 211, Town Hall.

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (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 (2) a veteran who 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, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.*

***The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months*, and if at least 50 employees are employed by the employer within 75 miles.

***Special hours of service eligibility requirements apply to airline flight crew employees.**

Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and

a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division



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