

**Office of Selectmen
Town of Moultonborough
6 Holland Street - PO Box 139
Moultonborough, NH 03254
(603) 476-2347**

**Policy Statement # 29
Family and Medical Leave Act Policy**

1.) Authority:

In accordance with RSA 31:39 and its role as the Governing Body, the Board of Selectmen (the “Board”) has the authority to adopt ordinances and statements of policy to order it’s affairs and guide the administrative functions of the corporate body politic of the Town of Moultonborough (the “Town”).

2.) Purpose:

This policy is to prescribe uniform procedures by which the Town will comply with the family and Medical Leave Act of 1993 (FMLA), as amended, and provide protected leave to eligible employees.

3.) Administration:

This policy shall be administered by the Finance & Personnel Director (the “Director”), or his/her designee, on behalf of the Town. All inquiries about the administration of this policy should be directed to the Director.

4.) Definitions:

Wherever a specific definition for a word or phrase is not provided below, it shall be defined as provided for in the FMLA or as otherwise understood in general usage.

- a) Active Duty or Call to Active Duty Status: A condition in which a person who is in the National Guard or Reserve components, or is a retired member of the Regular Armed Forces or Reserve, is serving, or directed to report to serve, under any directive lawfully issued to them for such purpose. An employee may not take exigency leave if the service member is a member of the Regular Armed Forces.
- b) Certifications: Any documentation requested to verify the condition for which the leave is being asked (i.e. health, caregiver, exigency), the amount of absence or conditions thereof (i.e. dates, duration, intermittent or reduced work schedule), a statement the employee is unable to perform the functions of their job or needed to care for a family member, and proof of relationship. The Director may request the employee to provide periodic updates (no more than every thirty [30] days of their protected leave of their status and intent to return to work).
- c) Child: A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis* (in place of a parent), who is under 18 years of age or 18 years of age or older and “incapable of self-care” because of a mental or physical disability that limits one or more of the “major life activities”.

- d) Covered Service Member:** A current member of the Regular Armed Forces, National Guard, or Reserve, including those on the temporary disability retired list (TDRL), but not including former members or members on the permanent disability retired list. The service member must be receiving medical treatment or oversight by a Department of Defense or Veterans Affairs health care provider or by a Department of Defense TRICARE network or non-network authorized private health care provider.
- e) Eligible:** As of the date that leave is to begin, employees must have been employed for the Town for at least twelve (12) months, which need not be consecutive, and must have worked at least 1,250 hours over that previous twelve (12) month time period.
- f) Employee:** Any person who receives any form of remuneration from the Town for which they are issued a federal W-2 form.
- g) Equivalent Position:** One which has the same pay, benefits, and working conditions including privileges and status involving the same or substantially the same duties, skills, effort, responsibility and authority.
- h) Health Provider:** A doctor of medicine or osteopathy, podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist), nurse practitioners, nurse-midwives, and clinical social workers authorized to practice medicine or surgery (as appropriate) by the state in which they practice, Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts; *or* any health care provider recognized by the employer or the employer's group health plan benefits manager.
- i) Key Employee:** Those salaried employees who are eligible and among the highest paid 10% of all the employees employed by the Town. These persons shall be afforded all protections of the act and the Town is not using the exemption otherwise allowing it to deny full and guaranteed access to return to work.
- j) Next of Kin:** The nearest blood relative other than parent, spouse, son, daughter or parent in the following order of priority: blood relatives who have been granted legal custody of the service member, brothers and sisters, grandparents, aunts and uncles and first cousins.
- k) Parent:** A biological, adoptive, or foster parent, or an individual who stands or stood *in loco parentis* (in place of a parent), to an employee when the employee was a child ("Parent" does not include mother-in-law or father-in-law).
- l) Prenatal Care:** Severe morning sickness or other prenatal complications which may need physical care, doctors' appointments or psychological care.
- m) Protected Leave:** The various forms of leave to be sought and granted under the FMLA which provide the employee with certain protections during their absence and upon their return to work. The employee shall expect to be protected from any retaliation arising out of the mere act of making a good faith application for such leave. There are four types of protected leave which may be used over the following twelve (12) consecutive month period from the date the leave commences:
 - i. Child Birth, Adoption or Fostering Leave:** Up to twelve (12) weeks of leave, as a combined total for any one employee or – if married – jointly by the two employees for prenatal care, birth and/or care of a newborn, or the adoption/fostering of a child by or of the employee or spouse.

- ii. Health Leave: Up to twelve (12) weeks of leave to care for or tend to serious physical or psychological conditions of the employee, the employee's spouse, child or parent.
 - iii. Military Exigency Leave: Up to twelve (12) weeks of leave to handle exigencies for a parent, spouse, son or daughter or a next of kin who is in an Active Duty or Call to Active Duty Status. Qualifying exigencies are short-notice deployment (leave permitted up to seven days if the military member receives seven (7) or less days notice of a call to active duty), military events and related activities, certain temporary childcare arrangements and school activities (but not ongoing childcare), financial and legal arrangements, counseling by a non-medical counselor (such as a member of the clergy), rest and recuperation (leave permitted up to five (5) days when the military member is on temporary rest and recuperation leave), and post-deployment military activities.
 - iv. Military Caregiver Leave: Up to twenty six (26) weeks of leave during a single twelve (12) month period on a per-covered service member, per-injury basis (which may be taken continuously, intermittently, or on a reduced schedule basis). The single twelve (12) month period is measured forward from the date an employee's leave begins so they may care for the covered service member. Once a single twelve (12) month period expires, the employee is eligible for another twenty six (26) weeks of military caregiver leave during a subsequent single twelve (12) month period to care for a different covered service member or to care for the same covered service member if he/she incurs a subsequent serious injury or illness.
- n.) Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that mainly involve one or more of the following circumstances; which is (a) anticipated to last more than 3 full consecutive days; (b) requires in-person treatment by a health care provider at least once within seven (7) days of the first day of incapacity; (c) requires either; (i) a regimen of continuing treatment initiated by the health care provider during the first treatment; or (ii) a second in-person visit to the health care provider for treatment (the necessity of which is determined by the health care provider) within thirty (30) days of the first day of incapacity; (d) may continue over an extended period of time (including recurring episodes of a condition); and (e) may cause episodic incapacity rather than a continuing period of incapacity. Serious health conditions DO NOT include cosmetic treatments, orthodonture, or other voluntary treatments, unless they result in hospitalization.
- o.) Spouse:** A husband or wife as recognized or defined under state law, including common law marriage, or a partner under any equivalent civil union statute.
- p.) Twelve Month Period:** For eligibility, a continually rolling period backwards of twelve (12) months of worked service, even if there were breaks in such service, from the date leave is to begin. For use, the consecutive twelve (12) month period forward from the date the leave is to begin. For the purposes of administration the Town shall apply the State of New Hampshire administrative procedure:
- "For instance, an eligible employee used 8 weeks of FMLA leave between May 15, 2000 and July 7, 2000. The employee requested 10 more weeks of FMLA leave starting on June 4, 2001. Measuring backward from the date on which the leave was expected to begin, the "rolling 12-month period" is used to determine eligibility for additional leave would run from June 4, 2000 to June 4, 2001. In this case, although the employee's last FMLA leave lasted for 8 weeks, only 5 of those weeks fell during the 12 last months period (June 4, 2000 to June 4, 2001). Therefore, the employee would be entitled to an additional 7 weeks (12-5=7) of job-protected FMLA leave, starting on June 4th, 2001."*

- q.) Worked: Being physically present on the job site or at approved training and conferences. Work shall not include any absence notwithstanding that it may have been compensated for in some fashion (i.e. holiday, sick, vacation and the like).

5.) **Policy:**

a.) **Application & Processing**

An employee shall request the leave, on a form to be designated by the Director, thirty (30) days prior to the date such leave is to begin. If thirty (30) days notice is not possible, the employee should notify the Director as soon as practicable. If the leave is taken on an emergency basis, the Town's normal call-in procedure for sick leave shall be followed and the employee shall file the request form as soon as practicable, normally three (3) days, thereafter. If the employee is unable to complete the request form, their supervisor shall complete and file the form, to the best of their ability, on the employee's behalf. Failure by the employee to provide advance notice is not necessarily an automatic reason for denying the leave but shall be viewed in the context of the event and the reasons therefore.

The first request for leave need not be in writing and need not specifically identify the sought after leave as FMLA leave. However, all communications thereafter shall specifically identify the leave as FMLA leave and identify the specific leave being sought.

Where the Town was not made aware that an employee was absent for FMLA reasons and the employee wants the leave counted as FMLA leave, the employee must provide timely notice, generally within two (2) business days of returning to work, that the leave was taken for an FMLA-qualifying reason. Whenever an absence was eligible for FMLA leave, the Town shall within two (2) days of finding out the reason for the absence and even if the employee does not request it as such, classify the absence as FMLA leave for the purposes of calculating the rolling twelve (12) month time period and so notify the employee.

Within five (5) days after the employee files their application, the Director shall notify them of his/her eligibility for protected leave, the specific type being granted, any conditions of the leave (i.e. requirement to use other accrued leave time) and of returning to work (i.e. fitness certification, payment of employee share of benefits, failure to return to work being considered a resignation, and the like).

If the employee is not eligible, the notice must state at least one reason why the employee is not eligible (i.e. worked insufficient hours, failure to provide a health provider certification or proof of relationship) and provide the employee seven (7) days to provide any corrective or missing information. If the employee does not correct it within this cure period, leave can be denied and a final notice of denial shall be delivered to the employee within five (5) days.

b.) **Response and Dual Protections**

The Director shall notify the employee of the decision upon their application within five business days thereafter. Such notice shall include what type and the amount of leave

being granted, the obligation to first use other accrued leave time, obligations for employee portions of insurance and other benefits and the like. Where the FMLA and the federal American With Disabilities Act of 1990 (ADA or other similar statutes conflict), the Town shall defer to the act according the employee the greatest protection.

During any single 12-month period, the employee's total leave entitlement is limited to a combined total of 26 weeks for all qualifying reasons under FMLA and military leave unless leave for FMLA health events occurs prior to the start of the Military Caregiver Leave. An employer must inform the employee if a fitness for duty certification will be required at the commencement of the leave.

c.) Time Blocks of Leave

Leave may be taken continuously (i.e. from x date to y date inclusive), intermittently (i.e. a number of days to be used over the twelve [12] week period) or as a reduced (i.e., fewer hours per day or week) work schedule. If the leave to be taken is of the latter two varieties, the employee shall notify their supervisor with sufficient advance item so that the Supervisor may reasonably schedule the backfilling of any critical vacancies (i.e. shift or office coverage.) so as not to unduly disrupt the employer's operation. The Town may 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.

d.) Manner of Communication

This policy shall be supplied to employees upon hiring, for which they shall sign a receipt, included in the Personnel Handbook and posted at each work site.

e.) Application of Other Leave Time

Employees shall first use any accrued vacation, personal, or sick time before commencing the use of FMLA leave. Whenever the leave is to care for a another person, the employee may use their accrued sick leave beyond the normally permissible three (3) days as otherwise specified in the Employee Handbook. Employees on leave for their own serious health condition who are receiving Workers' Compensation or state disability insurance benefits are not required to substitute vacation or other paid time off if the Town will count the time against the employee's FMLA entitlement.

f.) Fringe Benefits

During approved FMLA leave, the Town will maintain and pay for the benefits (i.e. health, dental, life and the like) as if the employee was not on leave. The employee shall pay their regular contribution rate either through payroll deductions, if they have other accrued paid leave they are using before using unpaid leave time, or by a direct payment. If the employee fails to make any payment within thirty (30) days of it being due, the Town will terminate coverage.

Employees who have additional voluntary benefits such as life insurance or disability insurance must contact the provider carrier for guidance on making payments or contributions during any period of unpaid FMLA leave.

If an employee who is able to return to work fails to return to work following FMLA leave, and/or if the employee does not stay for thirty (30) calendar days following restoration to the employee's position, the appointing authority may recover from the employee all premiums paid by the Town on their behalf during the FMLA leave. Such recovery will be made through deductions from any sums due to the employee (e.g., unpaid wages, vacation pay) provided such deductions do not violate Federal or State wage and hour laws, or the initiation of a legal action in small claims court.

g.) Earning of Time While on Leave

Any employee out on leave for more than 30 days shall not continue to accrue vacation or sick leave nor be eligible for any form of holiday pay during their absence or, in the instances of reduced or intermittent work schedules, be credited with only pro-rated earned leave time.

Failure to make application: Although an employee may not have requested FMLA leave, the Town retains the right to apply absences to the FMLA leave allowance if the absence falls within the scope of the law.

h.) Returning to Work From Leave

Whenever the employee returns to work they shall be returned to an equivalent position and credited with any employment benefit accrued prior to the start of such leave.

Whenever the leave granted was for a health related reason of the employee themselves, that employee must obtain, at their own expense, and present a certification from the employee's health care provider that the employee is fit to return to a full schedule of work. The Town shall not restore the employee to employment until an employee submits the required fitness for duty certification. If the employee qualifies as disabled under the Americans with Disabilities Act (ADA), fitness for duty examinations must be job-related, consistent with business necessity and the certification is limited to whether the employee can perform the essential functions of the job. Whenever the employee anticipates returning to work under ADA eligibility, the employee must make reasonable advance notice to determine if the Town is able to make reasonable accommodations as defined in the act.

i.) Failure to return to work form leave

Failure to return to work upon the earlier of receiving medical release from the employee's healthcare provider or after the expiration of the twelve (12) week period will subject the employee to termination. In the event of an attempt to return to work, without providing the required health care's provider certificate of fitness for duty or failure to provide the same within five business days of a formal request by the Director, the employee shall be deemed to have resigned their position.

j.) Layoff or Termination

The Town will not continue FMLA benefits or to reinstate employees who would have been laid off or otherwise would have had their employment terminated had they continued to work during the FMLA period as, for example, due to a general lay-off.

6.) Evasion of This Policy:

The intent of this policy is to standardize the treatment of employees. It shall be a violation of this policy, and a disciplinary offense, to act in any manner other than prescribed herein.

7.) Periodic Review and Revisions:

Annually, at the time of goal setting for the budget, the Town Administrator shall review this policy with staff and managers to determine how effectively it is meeting its purpose. Suggested revisions shall be submitted to the Board of Selectmen for consideration and adoption with the annual budget message submitted by the Town Administrator.

8.) Appeals:

Any party aggrieved by the decision of the Director may appeal this matter to the Board, on a form to be designated by the Director, together with any and all materials that would be submitted at an appeal hearing, within five business days having been notified of said decision. Such Appeal shall be placed upon the Agenda of the next regular business meeting of the Board, for which the Agenda remains open, where the Board will consider the matter and determine whether or not to have a formal hearing. The timetable after that shall be as established by the Board and its decision in any such matter shall be final.

Adoption:

Whereas this fulfills our intent for uniform procedures throughout the organization, we do hereby adopt the provisions of this policy on this 9th day of April, 2009.

Effective Date

This policy shall be effective on April 2, 2009.

BOARD OF SELECTMEN

Karel A. Crawford, Chair

Edward J. Charest

James F. Gray

Joel R. Mudgett

Betsey L. Patten

Standard DOL forms to be used and/or modified as appropriate:

- Department of Labor Federal Postings ([pdf](#))
- Department of Labor FMLA Forms
 - Self Health Certification Form ([pdf](#))
 - Family Health Certification Form ([pdf](#))
 - Notice of Eligibility and Rights & Responsibilities ([pdf](#))
 - Designation Notice ([pdf](#))
 - Certification of Qualifying Exigency for Military Family Leave ([pdf](#))
 - Certification for Serious Injury or Illness of Covered Service Member- Military Family Leave ([pdf](#))
- Health Certification Review Checklist and Definitions ([pdf](#))
- Release to Return to Work Letter and Form ([doc](#))
- Adult Child Medical Questionnaire and Letter ([doc](#))