



Town of Winthrop

FAMILY MEDICAL LEAVE ACT (“FMLA”) LEAVE

This Policy is to provide employees with a general description of entitlement to Family Medical Leave Act (“FMLA”) leave. In the event of any conflict between this Policy and the applicable law, employees will be afforded all rights required by law. If you have any questions or concerns about this Policy, you may contact the Human Resources Department.

Basic Leave Entitlement

The FMLA provides up to twelve (12) weeks of unpaid family medical leave (or up to twenty-six (26) weeks of military caregiver leave) to eligible employees.

Eligibility Requirements

Employees are eligible for FMLA leave if they have worked for the Town for at least twelve (12) months, which need not be consecutive, but which must be within the last seven (7) years. Eligible employees must have worked at least one thousand two hundred fifty (1,250) hours during the twelve (12) months prior to the start of the requested leave.

Types of Leave Available

Eligible employees may request FMLA leave for any of the following reasons:

- the birth and care of a newborn child of the employee;
- the placement with the employee of a son or daughter for adoption or foster care;
- to care for the employee’s spouse, son, daughter or parent who has a serious health condition;
- to take medical leave when the employee is unable to work because of a serious health condition that the employee has;
- for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation; or
- to care for a military service member whose illness or injury arises out of his or her military service.

Definition of Serious Health Condition

A serious health condition is defined as a condition which requires in-patient care at a hospital, hospice or residential medical facility, including any period of incapacity or any subsequent treatment in connection with such in-patient care, or a condition which requires continuing care by a licensed health care provider (a doctor of medicine, doctor of osteopathy, podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, nurse midwife and Christian Science practitioner).

This Policy covers illnesses of a serious and long-term nature resulting in recurring or lengthy absences. Generally,

a chronic or long-term health condition that results in a period of three (3) consecutive days of incapacity with the first visit to the health care provider within seven (7) days of the onset of the incapacity and a second visit within thirty (30) days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Military Family Leave Entitlements

Qualifying Exigency Leave

Eligible employees with a spouse, son, daughter or parent on active duty or call to covered active duty status in the National Guard or Reserves in support of a contingency operation may use their twelve (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.

Military Caregiver Leave

FMLA also includes a special leave entitlement that permits eligible employees to take up to twenty-six (26) weeks of leave to care for a son, daughter, parent or next-of-kin who is a covered service member during a single twelve (12) month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties, for which the service member is undergoing medical treatment, recuperation or therapy; or is in out-patient status; or is on the temporary disability retired list.

The term “serious injury or illness” means:

- in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness that was incurred by the member in the line of duty while on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty while on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating; and
- in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in the line of duty on an active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty while on active duty in the Armed Forces) and that manifested before or after the member becomes a veteran.

Benefits and Protections

During FMLA leave, we will maintain your health insurance coverage on the same terms as if you continued to work, if you have indicated your intent to return to work at the end of your FMLA leave. Arrangements to pay the employee share of such benefits must be made by contacting the Human Resources Department. If you do not return to work upon the completion of your FMLA leave, the Town may recover the cost of any payments made to maintain your health insurance coverage, unless the failure to return to work was for reasons beyond your control. Use of FMLA leave will not result in the loss of any employment benefit available prior to the start of FMLA leave.

Employees who return to work on or before the expiration of their FMLA leave will be restored to their original or an equivalent position with equivalent pay, benefits and other employment terms. Employees on FMLA leave are, however, not entitled to any greater rights than they would otherwise have been entitled, had they continued as active employees. Some key employees may not be entitled to reinstatement at the conclusion of their FMLA leave. Key employees will be notified of their status as such at the time of their leave request.

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 (intermittent leave is not, however, available to care for a child during the first twelve (12) months after the birth, adoption or placement in foster care). Leave due to qualifying exigencies may also be taken on an intermittent basis.

If you use intermittent leave, you must comply with our regular call-out procedure for each day on which you are absent, including specifically referring to the FMLA-qualifying reason for the leave.

Substitution of Paid Leave for Unpaid Leave

When FMLA is taken for the employee's own illness, then employees eligible for FMLA leave must use any available paid leave concurrently with their FMLA leave until all such paid leave is exhausted. Employees must comply with the Town's normal paid leave policies.

The Leave Year

The Town measures its leave year using a "rolling" twelve (12) month period measured backward from the most recent date an employee uses any FMLA leave.

Any family or medical leave which qualifies under both state and federal laws will be used concurrently to the extent permitted by those laws (i.e., Massachusetts Parental Leave, Workers' Compensation Law, etc.).

Employee Responsibilities

Employees must provide thirty (30) days' advance notice of the need to take FMLA leave when the need is foreseeable. When thirty (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. Notice may be verbal and need not even mention FMLA but must state the reason for the needed leave.

Within five (5) business days after the employee has submitted the appropriate certification form, the Human Resources Department will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice.

While on leave, employees are required to report periodically, at least once every four (4) weeks, the status of their medical condition and their intent to return to work. All information is to be submitted directly to the Human Resources Department.

Employees may be required to provide a fitness-for-duty statement before they return to work after an FMLA leave for their own serious health condition to determine the employee's ability to perform the essential duties and responsibilities of the employee's position. If you are required to provide this statement, you will be notified at the time that your leave is approved.

Certification of the Serious Health Condition

The Town will ask for certification of the serious health condition or the employee or employee's family member for which the FMLA leave is requested. The employee must respond to such a request within fifteen (15) days of the request or provide the Town a reasonable explanation for the delay. Failure to provide medical certification may result in denial of leave or denial of continuation of leave. Medical certification may be provided by submitting the DOL Certification of Health Care Provider for Employee's Serious Health Condition, which can be obtained from the Human Resources Department.

Certification for Qualifying Exigency for Military Leave

The Town will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family, which can be obtained from the Human Resources Department.

Certification for Serious Injury or Illness of Covered Service Member for Military Leave

The Town will require certification for the serious injury or illness of a covered service member. The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service Member, which can be obtained from the Human Resources Department.

FMLA Questions and Concerns

If you have any questions about your FMLA rights or responsibilities or if you disagree with a decision, we make regarding FMLA leave entitlement, please contact the Human Resources Department to resolve your concerns as soon as possible.

