

Family and Medical Leave Act (FMLA)

Number: F-6

Revision: 03/08/2021

Revision Date: 07/01/2017

1.0 POLICY

In accordance with the Family and Medical Leave Act (FMLA) of 1993, the Town of Carolina Beach provides employees who meet the requirements of the Act a total of 12 weeks of unpaid FLMA job-protection during a rolling 12-month period for their own illness, the illness of a family member, or because of a qualified exigency as specified in the Act. Town employees are also provided with unpaid FMLA job-protection for up to 26 weeks to care for a service member who is recovering from an injury or illness sustained while on active duty in support of a contingency operation.

2.0 PURPOSE

The Town recognizes that employees may occasionally need to take a leave of absence for their own illness, the illness of a family member, or to assist a service member who is family or next of kin. The FMLA, and its amendments, provide for unpaid FMLA job-protection for covered employees under specific circumstances. The Town complies with this law and considers its requirements to be the minimum. This policy explains the rules and procedures the Town uses to comply with FMLA.

3.0 SCOPE

This policy covers all employees of the Town.

4.0 DEFINITIONS

- **4.1 FMLA Eligible Employee** - An employee who has worked for the Town of Carolina Beach for at least 12 months and for at least 1,250 hours during the year preceding the start of the leave. The 12 months do not necessarily have to be consecutive.
- **4.2 Family Under FMLA** - For the purpose of this procedure, the word "family" is defined as the employee's legal spouse or the employee's biological, adoptive, foster, or stepchild, or parent. For the purpose of the 26-week qualifying event (under USERRA), the next of kin or nearest blood relative is considered family.
- **4.3 FMLA 12-Month Period** - The Town has defined the 12-month FMLA period as a rolling 12-month period meaning any consecutive 12-month period measured backwards from the date an employee uses any leave under FMLA job protection. Each time an employee uses FMLA job protection, the remaining leave entitlement will be any balance of the 12 weeks which had not been used during the preceding 12 months.

- **4.4 FMLA Qualifying Event** - FMLA qualifying events are birth of a child and in order to care for the child, placement of a child for adoption or foster care, to care for a family member who has a serious health condition, or a serious health condition of the employee that makes him unable to work. This definition includes workers' compensation absences. The entitlement to leave for the birth or placement of a child for adoption or foster care will expire twelve (12) months from the date of the birth or placement. Military family leave for up to 12 weeks because of a qualifying exigency or 26 weeks to care for an injured service member are also qualifying events.

5.0 ORGANIZATIONAL RULES

- 5.1 FMLA job protection may be used by an eligible employee to care for his child after birth, adoption, placement for adoption or foster care; to care for a member of the family who has a serious health condition; or for a serious health condition that makes the employee unable to perform his job. Military family leave for up to 12 weeks because of a qualifying exigency or 26 weeks to care for a service member is also included.
- 5.2 If the FMLA job protection is used for the purpose of the birth, adoption, placement for adoption or foster care of a child, and both parents work for the Town, a combined total of 12 work weeks of FMLA job protection may be used during a 12 month period.
- 5.3 Whenever possible, an employee must give 30-days advance notice of the need to use FMLA job protection. This notice should also include the employee's intent regarding his return to work. When circumstances do not allow advance notice, the employee must notify his supervisor as soon as physically possible.
- 5.4 Upon notification by management or the employee, Human Resources will send an appropriate FMLA application packet to the affected employee. The employee is responsible for following the FMLA application instructions provided to the employee in the application packet.
- 5.5 Any absence that would qualify for coverage under the FMLA may be protected under such laws as the ADAA. Prior to issuing a corrective action or adverse employment decision, supervisors should consult with the Human Resource Director.
- 5.6 An employee granted FMLA job protection for his own serious health condition is required to first use paid, accrued leave sick time for which the employee is eligible and qualified. Following the exhaustion of paid, accrued sick leave time, an employee granted FMLA job protection for his own serious health condition may choose to utilize accrued vacation time. Any and all types of paid leave used for FMLA will be counted in the 12-week total for the rolling year.

An employee granted FMLA job protection for the serious health condition of an eligible family member may utilize accrued vacation time prior to, or in lieu of utilizing paid, accrued sick leave time. An employee granted FMLA job protection for the serious health condition of an eligible family member may choose to utilize paid, accrued sick leave time for which the employee is eligible and qualified to take.

Any accumulated FLSA compensatory time belonging to the employee must be utilized first before any paid leave is utilized for FMLA absences, regardless of if the FMLA leave is utilized due to the serious health condition of the employee or an eligible family member.

Employees who apply for and are approved to receive benefits under the Town's Short Term Disability program are not required to utilize accrued sick leave or vacation leave, but may choose to supplement Short Term Disability benefits with enough accrued sick leave or vacation leave to make them whole. Employees should contact Human Resources for assistance in applying for Short Term Disability and to discuss pro-rata paid time off usage. At no time may an employee exceed his regular salary by drawing both Short Term Disability Benefits and sick time, or any other paid time off.

An employee accruing an overpayment (exceeding his regular salary) due to the retro-active payment of Short Term Disability benefits will not be eligible to utilize pro-rata accrued sick or vacation leave until the overpayment amount has been satisfied.

Hours the employee is absent from work due to the FMLA qualifying condition will be charged to the employee's FMLA entitlement regardless of if the employee is drawing Short Term Disability Benefits. For example, if an employee is receiving short term disability benefits equal to 30 hours of pay, those 30 hours will still be charged to the employee's FMLA entitlement. FMLA hours of usage are not tied to compensation paid to the employee, but rather, are calculated based on the hours the employee is absent from work due to the FMLA qualified reason.

- 5.7 FMLA job protection to care for a seriously ill family member or due to the employee's own serious health condition may be used intermittently. The employee may also reduce hours based on the medical necessity. Military leave for up to 12 weeks because of a qualifying exigency or 26 weeks to care for a service member may also be used intermittently. FMLA leave for birth, adoption or foster care of a child does not qualify for an intermittent or reduced schedule leave.

Intermittent leave is taken in separate blocks of time because of a single illness or injury and may include leave for periods of one hour or more up to several weeks. Examples of intermittent leave include leave taken on an occasional basis for medical appointments or leave taken several days at a time spread over a period of months, such as for chemotherapy. A reduced work schedule leave is a leave that reduces an employee's usual number of hours per work week or workday, generally from full-time to part-time. In those situations where intermittent leave or a reduced work schedule leave is approved, the hours missed from the employee's usual work week will be charged against the FMLA 12-week entitlement on a pro-rata basis. An intermittent leave example is as follows: If an employee who normally works five days a week takes off one day, the employee would have used 1/5th of a week of FMLA leave. Reduced work schedule examples would be: An employee who works half-days on a reduced schedule will have used 1/2 of a FMLA leave week; an employee who normally works 30 hours per week, but works a reduced schedule of 20 hours per week will have used 1/3rd of a FMLA week.

- 5.8 FMLA job protection resulting from an employee's own or his family member's serious health condition will require the employee to furnish medical certification substantiating the health condition at the time the leave is requested and periodically thereafter.
- 5.9 If FMLA leave without pay is granted by the Town under the Family and Medical Leave Act, the employee is responsible for paying his portion of insurance premiums, if any, and the Town will continue to pay its share.
- 5.10 An employee in a leave without pay status for more than one pay period does not accrue benefits such as sick and vacation leave, and the time in a leave without pay status will not be counted toward the employee's service time.
- 5.11 After consultation with the Human Resource Director or Town Manager a Department Head may temporarily reassign an employee on an intermittent or reduced work schedule leave to an alternate position which better accommodates the recurring periods of leave.
- 5.12 An employee who uses FMLA job protection is entitled to be returned to the same position that the employee held when the leave started, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. The Town cannot guarantee that an employee will be returned to his or her original job. If at the end of the 12-week FMLA entitlement the employee is unable to return to work, the department may terminate the employee. The employee may be eligible for a disability retirement. A determination as to whether a position is an "equivalent position" will be made by the Town of Carolina Beach.
- 5.13 The Town may discipline or dismiss an employee on an intermittent or reduced work schedule leave for poor performance or for excessive absenteeism unrelated to the basis for the FMLA leave.
- 5.14 A reduced work schedule which does not make use of any paid leave to make up the difference between the regular schedule and the temporary work schedule may result in a pro-rate reduction in the employee's paid leave accrual and benefits.
- 5.15 Exempt employees who use unpaid FMLA leave on an intermittent or reduced work schedule basis will have their salary reduced according to the hours of the leave without pay used, without compromising their exempt status under the Fair Labor Standards Act.
- 5.16 Continuation of retirement contributions is not mandated by the FMLA. All terms and conditions relevant to participation in the retirement system shall be in accordance with the rules established by NCLGERS Retirement Fund.
- 5.17 Vacation and sick leave accruals and retirement service credit will continue during any period of paid leave. However, no leave or retirement service credit will accrue during any period of leave without pay.
- 5.18 If there is a reduction in force while the employee is on FMLA leave, and the employee would have lost his position if not on leave, except as provided for under the Reduction in Force policy, there is no obligation to restore the employee to his former or equivalent position.

- 5.19 It is the Town's responsibility to designate leave as FMLA leave. This obligation supersedes an employee's desire to use his FMLA entitlement. The key to designating FMLA leave is the qualifying reason(s), not the employee's decision or reluctance to use FMLA leave. The designation must be based on information obtained from the employee or employee's representative.
- 5.20 The Human Resource Director will review, investigate and resolve suspected cases of bad faith, fraud or abuse of the FMLA leave policy. Abuses of the policy may result in, but are not limited to, revocation of the leave, refusal to restore the employee to his job; recovery of the Town costs for paid leave and insurance benefits, and disciplinary action up to and including termination.
- 5.21 An employee on FMLA is not authorized to perform Outside Employment. An employee found to be engaged in Outside Employment while on FMLA from the Town is subject to disciplinary action up to and including termination.
- 5.22 An employee who will not be returning to work at the conclusion of FMLA leave must notify the Town in writing as soon as practicable. In the absence of written notification, failure to return from leave shall be interpreted as a resignation.

6.0 PROCEDURES

- 6.1 When an employee needs to be absent from work because of a potential FMLA qualifying event as defined in Section 4.4 above, he will notify his supervisor of his need to be absent. The employee should indicate his need for the FMLA job protection, but the employee has the FMLA job-protection rights whether or not he indicates the leave is FMLA, or if the absence qualifies for FMLA.
- 6.2 When the employee notifies the supervisor of a potential FMLA event, or after the employee has been absent for five business days, the supervisor will notify Human Resources so the FMLA packet can be sent to the employee. The FMLA packet is either hand delivered to the employee or sent by US Mail.
- 6.3 Once the employee receives the FMLA packet of information, he will follow the instructions contained in the packet in order to ensure receipt of FMLA job-protection. If he does not respond to the packet or follow the instructions, he is not protected by FMLA, because Human Resources is not able to determine that a health issue exists in order to qualify for FMLA job protection. In this event, the absence may be classified as unauthorized leave and subject to the corrective action policy.
- 6.4 Where leave must begin prior to the confirmation of an FMLA qualifying event, the leave will be provisionally designated and so communicated to the employee in writing. Upon receipt of the requested information or medical certification which confirms that the leave either is or is not for an FMLA reason, the provisional designation will either be withdrawn or made final by providing written notice to the employee.
- 6.5 For leave related to a serious health condition or childbirth, the employee is required to provide medical certification from the employee's or the family member's qualified healthcare provider.

- 6.6 The Town may require a second medical opinion at the Town's expense. In the case of conflicting opinions, the opinion of a third health care provider, agreed upon by both the employee and the Town and paid for by the Town, shall be final.
- 6.7 At least five working days before the employee's scheduled return to work, the employee must contact their supervisor to inform them of the employee's intent to return to work. The supervisor must also discuss the return to work with Human Resources in order to assess fitness for duty, discuss any limitations placed on the employee, if any and determine the need for a Return to Work evaluation. The cost for a fitness-for-duty certification will be done at the employee's expense. If the employee fails to provide such certification, reinstatement will be delayed until the employee complies. If the certification is not submitted within 15 calendar days of the request, reinstatement may be denied. The Town reserves the right to have the employee examined by another health care provider at the Town's expense.
- 6.8 An employee on FMLA must continue to pay premiums on health and dental insurance plus any optional benefit products in a timely manner, if continued coverage during the leave period is desired.
- 6.9 The employee on FMLA is responsible for providing periodic reports to Human Resources regarding intent to return to work.
- 6.10 The employee must make reasonable efforts to schedule any medical treatments so as to not unduly disrupt the operations of the employee's working unit. During the course of the treatment, the employee may be required to provide certification from the treating health care professional of the unavailability of treatment during non-work time, or at times that are less disruptive to the operations of the employee's work unit.
- 6.11 The Town may require an employee to certify the family relationship if the need for leave is pursuant to adoption, foster care placement, birth of a child, or to care for a child or the employee's parent.
- 6.12 An employee unable to return to work following the planned conclusion of FMLA leave must contact the Human Resource department and provide reasonable notice of the need to extend any leave under any leave programs that may be available to the employee.

7.0 APPENDIX/APPENDICES

None