

## **FAMILY AND MEDICAL LEAVE ACT POLICY**

The VILLAGE OF ARDSLEY ("Village") complies with the provisions of the Family Medical Leave Act of 1993 ("FMLA"). This policy is applicable to all requests made by Village employees for leaves of absences under the FMLA.

### **Eligibility**

To be eligible for FMLA leave, an employee must have worked for the Village for at least 12 months, and at least 1,250 hours during the 12 month period preceding the commencement of the leave.

Hours that an employee would have worked but for his/her military service will be credited towards the employee's required 1,250 hours worked for FMLA eligibility. Similarly, the time in military service will be counted in determining whether the employee has been employed by the Village for at least 12 months.

### **Available Leave for Eligible Employees**

- A. Eligible employees may take up to 12 work weeks of unpaid leave per year (calculated as a "rolling" 12 month period measured backwards from the date the employee begins FMLA leave) for one or more of the following reasons: (i) the birth of the employee's child; (ii) the placement of a child with the employee for adoption or foster care; (iii) when the employee is needed to care for a spouse, child or parent) with a serious health condition; (iv) a serious health condition that makes the employee unable to work; or (v) any qualifying exigency arising out of the fact that the employee's spouse, child or parent is on active duty or has been notified of an impending call or order to active duty in the Armed Forces, National Guard or Reserves in support of a contingency operation.
- B. Eligible employees who are family members of covered service members may be eligible to take up to 26 work weeks of unpaid leave to care for an immediate family member (spouse, child, or parent) or next of kin (nearest blood relative) who has a serious injury or has a serious illness as a result of his/her military service.

For purposes of this policy, a "covered service member" is a 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. As used in this Section B only, a "serious injury or illness" is defined as follows:

- (1) If the service member is a current member of the Armed Forces, an injury or illness that was suffered while on active duty that may render a member medically unfit to perform the duties of the member's office, grade, rank or rating, or that existed before the beginning of the service member's active duty and was aggravated by his/her active duty service in the Armed Forces;

- (2) If the service member is a veteran, an injury or illness that existed before the beginning of the service member's active duty and manifested itself either before or after the service member became a veteran under certain circumstances.

The leave described in this Section B shall only be available during a single 12 month period. Any portion of the 26 weeks of leave that are not used during the 12 month period is forfeited. During the single 12 month period, an eligible employee shall be entitled to a combined total of 26 workweeks of leave under Section A and B. Nothing in this Section B shall be construed to limit the availability of leave under the Paragraph A during any other 12 month period.

- C. For purposes of this policy, a "serious health condition" is defined as an illness, injury, impairment or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider as follows:

1. *Inpatient Care* – any period of inpatient care (*i.e.*, an overnight stay in a hospital, hospice or residential medical care facility)
2. *Continuing Treatment by a Health Care Provider* – any period of incapacity requiring absence from work, school or other regular daily activities of more than 3 consecutive calendar days, and any subsequent treatment by a health care provider relating to the same condition that also involves any of the following:
  - (a) in-person treatment two or more times by a health care provider within 30 days of first day of incapacity; or
  - (b) in-person treatment by a health care provider on at least one occasion within 7 days of first absence which results in a regimen of continuing treatment under the supervision of the health care provider; or
  - (c) any period of incapacity or treatment for such incapacity due to a chronic serious health condition that requires 2 or more in-person treatments by a health care provider per year, continues over an extended period of time, and may cause episodic incapacity; or
  - (d) any period of incapacity due to pregnancy or prenatal care; or
  - (e) any period of permanent or long-term incapacity due to a condition for which treatment may not be effective, and requiring the continuing supervision of, but not the active treatment by, a health care provider; or

- (f) any period of absence to receive multiple treatments by a health care provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than 3 consecutive days in the absence of medical intervention or treatment, such as cancer (e.g., chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

Nothing in this Policy shall be deemed to limit an employee's or the Village's rights or obligations with respect to leave for disability under the New York Civil Service Law.

Application of FMLA Policy to Employees  
Covered by a Collective Bargaining Agreement

To the extent a collective bargaining agreement provides greater family and medical leave rights to an employee than the leave set forth by this Policy, the rights granted to the employee in the collective bargaining agreement will govern the family and medical leave rights of the employee. If an employee is entitled to family and medical leave under this Policy and under a collective bargaining agreement, the employee's family and medical leave will be deemed to have been taken concurrently under both this Policy and the collective bargaining agreement.

Notice and Reporting Requirements

All requests for FMLA leave under this policy should be submitted, in writing, to the Village Manager. The Application for FMLA Leave form below should be used for this purpose. Completed applications should be personally delivered, faxed, emailed or mailed to the Village Manager at:

E-mail: [mrobson@ardsleyvillage.com](mailto:mrobson@ardsleyvillage.com)

Facsimile: 914-693-3706

For an employee who requests leave for qualifying exigencies, he/she must give the Village notice of his/her need for FMLA leave as soon as possible and practical, regardless of how far in advance the need for leave is known. The employee may be required to provide the Village with a copy of the military service member's active duty orders, or other form documentation certifying the employee's request for FMLA leave.

For an employee who requests leave for any other reason under this policy and where the need for leave is foreseeable (such as the birth or adoption of a child, or scheduled medical treatment), he/she must submit the leave request in writing to the Director of Human Resources at least 30 days before the date the requested FMLA leave is to begin. In an unexpected emergency where it is not possible to provide 30 days' advance notice, the employee is expected to provide as much advance notice as is practicable.

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If the employee's need for FMLA leave is foreseeable, the employee must make efforts to schedule leave in a manner that does not unduly disrupt the Village's operations. The Village reserves the right to request that such leave be rescheduled.

In cases of where FMLA leave is taken in connection with a serious health condition, the Village requires that the employee report periodically on his/her leave status and intention to return to work at the end of the approved FMLA leave period.

#### Medical Certification / Military Leave Certification

When an employee requests FMLA leave because of the employee's own serious health condition, or to care for a spouse, child or parent with a serious health condition, the employee must submit to the Village written medical certification from his/her health care provider that states:

- (1) the date on which the serious health condition began; and
- (2) the probable duration of the serious health condition; and
- (3) appropriate medical facts within the knowledge of the health care provider regarding the condition.

Where the leave is requested for the employee's own serious health condition, the medical certification must also state that the employee is unable to perform the duties of his/her job as a result of the condition. Where the leave is to care for a spouse, child or parent with a serious health condition, the medical certification must provide an estimate of how much time the employee needs to care for that individual. Where leave is requested on an intermittent basis, or on a reduced schedule basis, for planned medical treatment, the medical certification must also state the dates on which treatment is expected to be provided and the duration of the treatment.

The Village may, at its discretion and at its own expense, require the employee to obtain a second opinion from a health care provider designated and approved by the Village. If the second opinion differs from the first opinion, the Village, again in its discretion and at its own expense, may request a third opinion from a health care provider approved by both the Village and the employee. The third opinion will be binding on both parties.

The Village may also require certification from an employee requesting qualifying exigency leave, or leave to care for a seriously injured or ill covered service member in accordance with applicable law.

The Village may also require an employee on FMLA leave to undergo periodic recertification when the Village, in its discretion, deems recertification is warranted in accordance with applicable law.

#### Substitution of Accrued Paid Leave for Unpaid FMLA Leave

An employee taking leave pursuant to the FMLA will be required to use any accumulated paid leave (e.g., vacation, personal leave, sick leave and/or compensatory time as appropriate for the particular type of leave) concurrently during the FMLA leave if the employee is otherwise entitled to paid leave under another employment policy. Such paid leave time shall count toward the maximum of 12 work weeks, or 26 work weeks as applicable to family members of covered service members, of leave permitted by this Policy. The remainder of the leave, if any, will be unpaid.

Any unpaid leave available under a collective bargaining agreement or other Village policy must also be used concurrently and will be counted towards an employee's FMLA entitlement as set forth above.

#### Intermittent and Reduced Schedule Leave

FMLA leave time may be taken intermittently or on a reduced schedule basis whenever the leave is medically necessary for the employee's own serious health condition, to care for the serious health condition of the employee's spouse, child or parent, or to care for a covered service member with a serious injury or illness.

FMLA leave may also be taken intermittently or on a reduced schedule basis for an expectant mother before the birth of her child for prenatal care or if her condition makes her unable to work. However, FMLA leave may not be taken intermittently or on a reduced schedule basis relating to the birth or placement of a child after the child is born or placed with the employee.

If the need for intermittent leave is foreseeable, based on planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to disrupt the Village's operations.

When an employee requests FMLA leave on an intermittent or reduced schedule basis, the Village may temporarily transfer the employee to an alternative position of equivalent pay and benefits, which better accommodates recurring periods of absence or a reduced schedule.

#### Return to Work Certification

Any employee taking FMLA leave on a non-intermittent/reduced leave basis to care for his/her own serious health condition will be required to submit to the Village Manager a certification from his/her health care provider confirming that the employee is medically able to return to work. The Village may require an employee taking leave on an intermittent or reduced leave basis to submit a fitness-for-duty certification signed by their health care provider where, in the Village's discretion, reasonable safety concerns exist.

#### Status of Benefits While on Leave

While an employee is on FMLA leave pursuant to this Policy, he/she will continue to be covered under the Village's insurance plans in effect at the time and so chosen by the employee, so long as the employee continues to pay whatever employee portion of the premium costs is required under Village policy and/or the applicable provisions of any applicable collective bargaining agreements.

If paid leave is used for any portion of the FMLA leave, employee premiums will be deducted from the leave payments in accordance with the practice applicable to an employee not on leave. Therefore, those employees using vacation or other paid days toward their FMLA entitlement will maintain the benefit coverage in place for those employees using such days for a non-FMLA purpose.

At the time an employee begins unpaid FMLA leave, he/she will receive written instructions detailing the time and manner in which the employee premiums, if any, are to be paid. Failure to pay any required premiums by the end of the grace period stated in the written instructions will result in the loss of insurance coverage so chosen by the employee. The payment of premiums by employees covered by a collective bargaining agreement shall be at the rate set forth in the collective bargaining agreement.

An employee who fails to return to work after having exhausted all of his/her FMLA leave will be required to reimburse the Village for the portion of the health care premiums paid by the Village during the leave unless the employee can establish that the failure to return was due to the continuation, recurrence or onset of a serious health condition which meets the criteria for leave under this Policy or was due to other circumstances beyond the employee's control.

#### Restoration of Position and Benefits

At the conclusion of an employee's FMLA leave, the employee will be returned to the position that the employee held prior to taking the leave. If that position is not available, the employee will be placed in a position that is equivalent in pay, conditions and other terms of employment to the employee's prior position. An employee on FMLA leave will not accrue any seniority or employment benefits during any period of unpaid FMLA leave except as expressly stated herein or as otherwise provided by an applicable collective bargaining agreement or by law. The number of calendar days taken as unpaid leave will be utilized to adjust the employment anniversary date for purposes of calculating seniority and other employment policies of the Village, unless otherwise provided law or the provisions of an applicable collective bargaining agreement.

Under certain circumstances, the Village may deny job restoration to key employees. A key employee is a salaried employee eligible to take leave under this Policy who is among the highest paid 10% of all the employees—both salaried and non-salaried, eligible and

ineligible under this Policy—who are employed by the Village. Unless otherwise prohibited by applicable law and/or the terms of a collective bargaining agreement, the Village may refuse to reinstate key employees after using FMLA leave if it determines that substantial and grievous economic injury would result from reinstatement. If this determination is made, the employee will be notified in writing and given an opportunity to end the leave and return to work. If the employee remains on leave, he/she will not have a right to be restored to employment.

#### Reservation of Rights

The Village will comply with all legal requirements for providing FMLA leave to eligible employees. To the extent the law permits employer discretion, the Village hereby expressly reserves the right to modify, change or eliminate any provision of this policy subject to applicable law and/or the provisions of an applicable collective bargaining agreement with respect to any employee or group of employees and does not intend to create a contractual commitment to any employee by issuing this Policy.

**APPLICATION FOR FMLA LEAVE**

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Current Address: \_\_\_\_\_

Start Date of Anticipated Leave: \_\_\_\_\_

Expected Date of Return to Work: \_\_\_\_\_

Reason for Leave (Explain): \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_