



Family and Medical Leave Act Policy

Policy Number: PP 2-8

Effective Date: July 01, 2017

Approved By: Roger L. Stancil, Town Manager

POLICY

The Town of Chapel Hill complies with the Federal Family and Medical Leave Act (FMLA), which allows eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

PURPOSE

Family and medical leave helps employees who must deal with their own serious illness; the illness of an FMLA- defined qualifying family member; or for the birth, adoption, or new placement of a foster child into the home. Freedom from the worry of losing one's job due to these life events protects the mental well-being of valued Town employees, in alignment with our Safety value. The Director of Human Resource Development is authorized to issue procedures consistent with this policy.

R.E.S.P.E.C.T. VALUES



Safety: We strive to maintain our own mental and physical well-being and the well-being of those around us. We are dedicated to a work environment that minimizes risk of injury or accident. We are also dedicated to an environment that provides for honest and courteous discussion of workplace issues without fear of repercussion.

APPROVAL

Roger L. Stancil, Town Manager



Family and Medical Leave Act Procedures

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Approved By: Cliff Turner, Human Resources Development Director

PROCEDURES

These procedures are issued by the Director of Human Resource Development to implement the Family and Medical Leave Act Policy, PP 2-8, issued by the Chapel Hill Town Manager. These procedures may be periodically updated.

A. Determining Eligibility:

1. Employment Criteria: Employees who have been employed by the Town for at least 12 months and have worked at least 1,250 hours in the 12 months preceding the start of the leave are eligible for FMLA leave. Only hours actually worked count toward the 1250-hour requirement.
2. Qualifying Use: Eligible employees can take up to 12 weeks of job-protected leave for one of these qualifying uses, or in accordance with federal, state or local laws, as they may be periodically updated or modified. (US Department of Labor, Wage and Hour Division, Fact Sheet #28 F)
 - a) For the birth of a child, and to bond with the newborn child within one year of birth.
 - b) The placement of a child for adoption or foster care and to care for the newly placed child within one year of placement.
 - c) To care for an employee's spouse, son, daughter, or parent who has a serious health condition.
 - i. *Employees requesting leave to care for a qualifying domestic partner should use the procedures outlined in **PP 2-13 Non-FMLA Medical Leave of Absence**. Qualifying domestic partners are defined in the Town's Code of Ordinances, Section 1-2.*
 - d) A serious health condition that makes the employee unable to perform the functions of his or her job.
 - e) For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or call to covered active duty status as a member of the National Guard, Reserves, or Regular Armed Forces.
 - i. Special Provisions to Care for a Covered Service member: The FMLA allows eligible employees to take up to 26 workweeks of unpaid, job-protected leave in a "single 12-month period" to care for a covered service member with a serious injury or illness.

3. Determining the 12 month Eligibility Period: The Town will use a 12- month measurement period to determine eligibility. The eligibility period is calculated based on the number of hours actually worked in the 12-months preceding the request for FMLA. Subsequent requests will be calculated based on a 12-month rolling eligibility period. Each time the employee submits a request for FMLA leave, the Town will calculate the number of hours the employee has worked in the previous 12-month period.

B. When FMLA Need is Foreseeable:

1. Notice Requirements: Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When a 30-day notice is not possible, the employee must provide notice as soon as is practical.

a) In the case of FMLA leave for a qualifying exigency of a military family member, the employee must give notice of the need for such leave as soon as possible and practical, regardless of how far in advance the leave is needed.

2. Planned Medical Treatment:

The employee must consult with his or her employer and try to schedule the treatment at a time that minimizes the disruption to operations. The employee should consult with the employer prior to scheduling the treatment in order to arrange a schedule that best suits the needs of both the employee and employer. Of course, any schedule of treatment is subject to the approval of the treating health care provider.

C. When FMLA Leave is not Requested or Foreseeable:

When the need for leave is unexpected, the employee must provide notice as soon as possible and practical. In most situations, it is reasonable to expect that the employee would provide at least 24-hour notice. Whether the employee's notice of unforeseeable leave is timely will depend upon the facts of the particular case.

D. Requesting Leave:

Forms: Employees may obtain FMLA leave request and medical certification forms from the Human Resource Development (HRD) department or from their department's Payroll and Benefits Representative. Completed requests for FMLA should be sent to HRD.

E. Determination of Eligibility: HRD will respond to an employee's written request for FMLA leave within five (5) business days of the receipt of the request.

a) Eligible: If the employee is eligible, the response will specify any additional information required as well as the employee's rights and responsibilities.

b) Not Eligible: If the employee is not eligible, the Town will provide a reason for the ineligibility.

- c) Role of HRD: HRD will inform employees as soon as practical if the employee is eligible for the requested leave and of the number of hours the employees is entitled to.
- d) Three-Day Guideline: Leave may be designated as FMLA when a qualifying event requires the use of three consecutive days of leave.

F. Authority to Designate: Employees on approved leave who qualify for FMLA, but do not submit a notice or request for FMLA, may be placed on FMLA by the Town. The Town will notify an employee of the designation as soon as is practical. Leave may be designated as FMLA when a qualifying event requires the use of three consecutive days of leave.

G. Medical Certification: Employees who are requesting medical or military FLMA must submit a completed Medical Certification Form to HRD.

1. Recertification: Employees who are on FMLA may be required to submit recertification forms if the employee requests an extension of the originally approved leave, or if circumstances described in a previous certification, such as the duration or nature of the illness, change significantly. The Town may also require recertification if it receives information that casts doubt on the continuing validity of the certification.

H. Validity of Certification:

1. Contact by Employer: If an employee submits a complete certification signed by the health care provider, the Town may not request additional information. However, a health care provider, human resource professional, a leave administrator, or a management official representing the Town may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification. The employee's direct supervisor cannot contact the employee's health care provider.
2. Incomplete or Insufficient Medical Certification: If the Town deems a medical certification to be incomplete or insufficient, the Town shall specify in writing what information is lacking, and give the employee seven calendar days to cure the deficiency.
3. Second Opinion: If the Town has reason to doubt the validity of a medical certification, it may require the employee to obtain a second opinion with the following conditions:
 - a) the Town bears the expenses, including reasonable "out of pocket" travel expenses;
 - b) the Town may not require the employee or family member to travel outside normal commuting distance except in very unusual circumstance;
 - c) pending receipt of the second (or third) opinion, the employee is provisionally entitled to FLMA leave;

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- d) if the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave; and
- e) the Town will designate the health care provider to furnish the second opinion.

The Town may deny FMLA leave to an employee who refuses to release relevant medical records to or otherwise cooperate with the health care provider designated to provide a second or third opinion.

Some Reasons Why the Town Might Request a Second Opinion.

- a. Recurrent FMLA requests that occur as soon as the employee becomes eligible for it
- b. Requests signed by a medical professional other than a licensed physician, Doctor of Osteopathy, or a Licensed Nurse Practitioner
- c. Certification by a medical professional not licensed to practice in the United States of America

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- 4. Results of Second Opinion: The second opinion will be the Town's final determination of an employee's FMLA eligibility. If the employee disagrees with the second opinion, they may submit a written request for a third opinion to the Town's HRD department within five (5) business days of receiving the Town's determination of FMLA eligibility.
- 5. Third Opinion: If an employee requests a third opinion, the Town will pay for the third opinion and the third opinion shall be final and binding. The third health care provider must be jointly designated or approved by the Town and the employee. The employer and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider. If the employer does not attempt in good faith to reach agreement, the employer will be bound by the first certification. If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification.

Communication with Employee: The employee may make a written request to HRD for a copy of the second and/ or third medical opinion. The Town will provide the opinion within five (5) business days of receiving the written request.

I. Retroactive Leave:

An employee may request that prior qualifying absences be designated retroactively as FMLA by notifying the supervisor and/or HRD within two (2) business days of their return to work and providing appropriate documentation. This provision does not apply to previously designated intermittent leave.

The Town may also, retroactively designate qualifying leave as FMLA upon the employee's return to work and the submission of the appropriate documentation.

J. Unanticipated FLMA Leave:

An employee should notify HRD as soon as is practical and provide appropriate documentation when they must be absent from work for an FMLA- qualifying event.

K. How FMLA Leave Can Be Taken: Leave may be taken consecutively, intermittently, or on a reduced schedule when medically necessary. Leaves due to qualifying exigencies may be taken on an intermittent basis.

a) Leave for the Birth, Adoption, or Foster Placement of a Healthy Child: In general, the Town prefers that FMLA leave taken for these reasons be taken as a continuous block of leave. However, intermittent leave can be taken if approved by the employer. Approval is subject to the operational needs of the department. The department may require reasonable advance scheduling notice to take intermittent leave to care for a healthy child.

i. Paid parental leave must be taken as a continuous block of leave. In these instances, intermittent leave may be requested for the remaining FMLA entitlement period. It will begin after the completion of the paid parental leave continuous block of leave.

L. Workers' Compensation: When an employee qualifies for FMLA, leave will run concurrently with Worker's Compensation leave during a work related injury or illness.

M. Pay and Benefits:

1. Use of Leave: Employees may use paid leave benefits such as vacation, compensatory time, holiday, donated leave, or leave without pay. All use of paid leave must comply with the Town's leave use policies.

2. Maintenance of Benefits: During an approved leave the Town will continue to pay the employer's share of benefits including health insurance premium and disability insurance in accordance with the Town's policies. Employees are responsible for any deductions they have withheld from their paychecks, including dependent healthcare premiums, dental insurance, voluntary disability coverage, 401K, child support and any other miscellaneous deductions.

a) If the employee's paycheck is not sufficient to pay for their deductions, the Town will not pay them on behalf of the employee.

b) Employees may make arrangements with the Town for future payments of medical, dental, and disability deductions. All other deductions are the responsibility of the employee.

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3. Timesheet Meeting: Employees should work with their Payroll/Benefits representative or designated representative to fill out their timesheet (s) prior to their leave to the extent that is possible.
4. Payroll and HRD Consultation: Questions about salary, benefits, and payroll deductions during an employee's FMLA leave should be referenced to the payroll division of Business Management and the Human Resource Development Department.
5. FMLA Designation for Holidays; If an employee is on FMLA leave but performs work for any position of a week in which a Town-recognized holiday falls, then the employee is entitled to holiday pay/leave. Otherwise, if the employee is in unpaid status, then the employee is not entitled to holiday pay. Holidays that occur during the employee's FMLA leave count against the employee's FMLA entitlement and cannot be used to extend the leave period.

N. Return to Work:

1. Same or Equivalent Position: Eligible employees are entitled to be restored to the same or an equivalent position as they held when the leave started.
2. Medical Release and Certification: Employees on leave for a non-work related condition must present a medical release certifying that they are medically capable of performing the essential functions of the job.
3. Requesting Additional Leave after FMLA has been Exhausted: Employees not able to return to work after using all FMLA leave benefits may request additional leave. Additional leave requires the approval of the Department Head and/or Town Manager. See the Town's Non-FMLA Medical Leave Policy for more details.
4. Temporary Reassignment during Intermittent or Reduced Schedule FMLA: In cases where intermittent leave or a reduced schedule has been approved, the Department is allowed to temporarily reassign the employee to a different position for the duration of the leave. Employees who are reassigned will not lose any pay or benefits. Reassignment should be for the purposes of better accommodating the employee's need for leave and/or the Department's operational needs.
5. Options if Employee is Unable to Perform Essential Functions: If an attending physician or Town-approved physician determines that an employee will no longer be able to perform the essential functions of his/her job, even with reasonable accommodations, the employee must elect one of the following options within 60 days of such notification:
 - a) Retirement: pursue a medical retirement under the N.C. State Retirement System, if eligible, with an effective date no later than 90 days from the assessment date;
 - b) Alternative Employment: seek a transfer to another vacant position for which he/she is qualified; Salary placement will be based on the pay grade of the new position; or
 - c) Termination: be terminated from Town employment for medical reasons.

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d) Resign from employment with the Town in good standing.

6. Failure to return to work: Failure to report at the expiration of the leave, unless an extension has been requested, may be considered as a resignation.

G. FMLA Recordkeeping and Administration:

1. Employees should submit FMLA requests to HRD.
2. HRD makes eligibility determination and notifies the Department that the employee has been approved for FMLA.
3. The Department must forward a completed Personnel Transaction Form (PTF) to HRD for each employee who is approved for FMLA.
4. Departments are responsible for ensuring that time cards are properly coded and reflect the FMLA leave designation.
5. Hours coded to FMLA will be tracked in the Town’s HRIS system.
6. Employees who request FMLA leave should consult with HRD and Payroll to receive individualized assistance and have their questions answered.
7. FMLA records are confidential and maintained by the Human Resource Development Department.

PROCEDURES
APPROVED BY

Cliff Turner, Human Resources Development Director 

ADDITIONAL
CONTACTS

Human Resource Development 919-968-2700 or HR@townofchapelhill.org
 Ombuds office 919-265-0806 or Ombuds@townofchapelhill.org

FORMS/
INSTRUCTIONS

[Certification of Health Care Provider for Employee’s Serious Health Condition \(US Dept. of Labor\)](#)
[Certification of Health Care Provider for Family Member’s Serious Health Condition \(US Dept. of Labor\)](#)
[Certification of Qualifying Exigency for Military Family Leave \(US Dept. of Labor\)](#)
[Certification for Serious Injury or Illness of Covered Service member—for Military Family Leave \(US Dept. of Labor\)](#)
 FORM 2-8 A Town of Chapel Hill Request for Family and Medical Leave

DEFINITIONS

The provisions of the Family and Medical Leave Act (FMLA) are highly detailed, including the definitions of many key terms used in this policy. Please consult the various fact sheets published by the US Department of Labor. <http://www.dol.gov/whd/fmla/>

Following is a partial list of terms used in this policy whose definitions may be found in the Federal Act:

A. **Covered Service member** - means 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.

DEFINITIONS
CONT.

- B. **Family Member—FMLA Definition** –The Family and Medical Leave Act defines a qualifying family member as the employee’s spouse, child, or the employee’s own parent. In rare circumstances, some other family members may also qualify. The Town’s Policy also includes domestic partner as defined in the Town’s Code of Ordinances, Section 1-2.
- C. **Health Care Provider:** - A Doctor of medicine or Osteopathy who is authorized to practice medicine or surgery in the State of North Carolina, or any other person determined by statute, credential or licensure to be capable of providing health care services which include:
1. Physician Assistants, Podiatrists, Dentists, Clinical Psychologists, Clinical Social Workers, Optometrists, Nurse Practitioners, Nurse Midwives, Chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist);
 2. Health care providers from whom the Town’s approved group health plan will accept certification of a serious health condition to substantiate a claim for benefits.
- D. **Intermittent Leave** - Leave that is not taken consecutively or leave taken on a reduced schedule. An example of intermittent leave might be leave that is taken spread over a period of months.
- E. **Twenty-six Week Period** - for purposes of FMLA military family leave applicable to a qualifying FMLA condition means twenty-six work weeks of leave during a single twelve month period of care for the service member. Twenty-six workweeks is the maximum amount of FMLA leave in a single twelve-month period and cannot be combined with an additional 12 weeks for other FMLA reasons.
- F. **Qualifying Exigency Leave** -The military leave entitlement helps families of members of the National Guard and Reserves manage their affairs while the member is on active duty in support of a contingency operation. For more information, please refer to Fact Sheet #28 M C Qualifying Exigency Leave under the Family and Medical Leave Act
- G. **Qualifying military events and related activities:** Childcare and school activities; Financial and legal arrangements; Counseling; Rest and recuperation; Post-deployment activities; Additional activities not encompassed in the other categories, but agreed to by the employer and employee
- H. **Serious Health Condition** - A condition that requires inpatient care at a hospital, a residential medical care facility; or a condition, which requires continuing care by a licensed health care provider.
- I. **Serious Injury or Illness for Covered Service members** -The term “serious injury or illness,” in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty while on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.

RESPONSIBILITIES

All Employees are expected to:

- a) Promptly notify HRD when they anticipate a need for FMLA leave, or as soon-as is practical.
- b) Notify supervisor of need for leave.
- c) Fill out paperwork and provide requested documentation.
- d) Provide medical certifications or return to work documentation when requested
- e) Use FMLA only for its intended purpose.
- f) Ask questions about anything they do not understand.

All Supervisors/Managers and Department Heads are expected to:

- a) Direct employees to HRD if there is any reason to believe that the employee might qualify for FMLA. A leave request might qualify for FMLA, or if an employee has been off work for more than 3 days for any reason other than annual leave.
- b) Accommodate approved FMLA leave requests, such as intermittent or reduced schedule leave.
- c) Seek guidance from HRD about the FMLA.

All Human Resource Development staff members are expected to:

- a) Maintain confidentiality regarding FMLA requests.
 - b) Assist all employees in understanding and applying for FMLA leave.
 - c) Assist managers and department heads in complying with approved FMLA leave requests.
 - d) Gather and maintain appropriate documentation.
 - e) Promptly communicate with employees about their FMLA leave request status and any other issues about FMLA.
- Assure that the Town complies with all provisions of FMLA.

FREQUENTLY
ASKED
QUESTIONS

The Federal Government has extensive resources, including FAQ's, definitions, eligibility criteria, and more, on its FLMA website, <http://www.dol.gov/whd/fmla/>

Please consult these resources for specific information about FMLA. Employees who want more assistance with their particular FMLA needs should contact their HRD partner, or a member of the HRD team, to receive accurate information relevant to their particular circumstances.

SCOPE

This policy applies to all employees who qualify under the FMLA guidelines.

RELATED
INFORMATION

The Federal Family Medical Leave Act of 1993, for extensive information about the Act, including eligibility criteria, legal obligations, Frequently Asked Questions, qualifying uses, and more.
Fact Sheet #28 M C Qualifying Exigency Leave under the Family and Medical Leave Act
Town of Chapel Hill Code of Ordinances Section 1-2, for a definition of a covered domestic partner.

The following Town Policies Intersect in some way with FMLA. All these policies may be found on the Town's website in the HRD Policy Library on the [HRD Homepage](#), or upon request from the HRD office.

RELATED
INFORMATION
CONT.

PP 2-1 Leave Donation Policy
PP 2-3 Holiday Pay
PP 2-6 Town Sick Leave Policy
PP 2-9 Annual Leave
PP 2-10 Worker Compensation
PP 2-11 Parental Leave

PP 2-13 Non-FMLA Medical Leave
PP 2-14 Leave of Absence
PP 2-15 Return to Work
PP 6-1 Health Insurance
PP 9-1 Reduction in Force

POLICY
HISTORY

Adopted August 7, 1996

Revised November 2000

Revised July 1, 2011

Revised July 1, 2017

Revised October 31, 2017: new parents can request intermittent leave

Revised November 20, 2018: how to request leave for a qualifying domestic partner.

This policy replaces and supersedes any previous Town policies, departmental policies, handbooks, or unwritten policies or practices covering the same subject. Departmental policies in compliance with this policy are referenced in Section XI Related Information. In the event of any disparity between this policy and the Town's Code of Ordinances and/or applicable local, state, or federal laws, the Town's Ordinance and/or applicable laws shall prevail.

