

# **FAMILY AND MEDICAL LEAVES OF ABSENCE POLICY**

(Passed by Congress in 1993)

*Included in Newton's Personnel Policy and Procedures on June 2, 2008*

Eligible employees may take up to twelve (12) weeks of unpaid family/medical leave within a 12-month period and be restored to the same or equivalent position upon return to work. These twelve (12) weeks will be tracked beginning on the first day of leave. To be eligible for family/medical leave, you must have worked for the Town of Newton: for at least twelve (12) months; must have worked at least twelve hundred fifty (1,250) hours in the past twelve (12) months; and must work at a work site where the Town of Newton employs 50 or more employees within a 75 mile radius.

Eligible employees may take family/medical leave for any of the following reasons:

- **A** - the birth of your child and in order to care for the child (leave must be taken within 12 months of the birth);
- **B** - the placement of a child into your home for adoptive or foster care (leave must be taken within 12 months of the placement);
- **C** - to care for your spouse, parent, minor child, or adult child (when the adult child is not capable of self care and the employee is needed for such care) with a serious health condition; or
- **D** - due to your own serious health condition which renders the employee unable to perform the functions of his or her position.

The Town of Newton has the right to designate FMLA leave any time an eligible employee requests time off for a qualifying reason. For example, if an eligible employee suffers a work related injury that qualifies as a serious health condition, the Town of Newton has the right to designate any time away from work as FMLA leave.

**Tracking Leave:** As stated above, an eligible employee is entitled to a total of twelve (12) work weeks of leave during any twelve (12) month period. That twelve (12) month period is defined as a "rolling" twelve (12) month period measured backward from the date an employee begins an FMLA leave. In other words, the number of weeks an employee has available upon the beginning of a FMLA leave will be twelve (12) weeks less the number of FMLA leave weeks taken in the twelve (12) month period prior to the beginning of the current FMLA leave (the "Available Leave Weeks"). For example, if an employee used four weeks beginning February 1, 2006, four weeks beginning June 1, 2006, and four weeks beginning December 1, 2006, the employee would not be entitled to any additional leave until February 1, 2007. Beginning on February 1, 2007, the employee would be entitled to four weeks of leave; on June 1, 2007, the employee would be entitled to four additional weeks; and so on.

FMLA leaves for the birth or placement for adoption or foster care of a child, as described in paragraphs A and B above, must be taken all at once unless otherwise agreed to by the Town of Newton. If medically necessary, FMLA leaves due to illness as described in paragraphs C and D above may be taken on an intermittent or reduced leave schedule. If FMLA leave is requested on

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this basis, however, the Town of Newton may require the employee to transfer temporarily to an alternative position which better accommodates periods of absence or a part time schedule, provided that the position has equivalent pay and benefits.

Employees taking intermittent or reduced schedule leave will be paid for the time they work, and the leave time away from work will be unpaid unless the employee qualifies for workers' compensation, short-term disability, or other benefits. If you are a salaried employee, the Town of Newton will adjust your salary based on the amount of time actually worked.

**Employee Benefits:** Employees are required to use any accrued, unused vacation and sick/personal days during FMLA leave unless the FMLA leave is otherwise paid through workers' compensation benefits, short-term disability benefits, or other benefits. The substitution of paid leave time for unpaid leave time does not extend the 12-week FMLA leave period. Also, your FMLA leave may run concurrently with other types of leave, such as maternity leave.

During an approved FMLA leave, the Town of Newton will maintain your health benefits under the same terms and conditions applicable to employees not on leave.

- If paid leave is substituted for unpaid FMLA leave, the Town of Newton will deduct your portion of the health plan premium as a regular payroll deduction.
- If your leave is unpaid, or is paid through workers' compensation, short-term disability benefits, or other benefits not provided through the Town's payroll system, you must pay your portion of the premium by making arrangements with the Town Administrator / Board of Selectmen.
- Your health and other benefit coverage may be canceled if your premium payment is more than 30 days late.
- If you elect not to return to work at the end of the leave, you will be required to reimburse the Town of Newton for the cost of the premiums paid by the Town for maintaining coverage during your unpaid leave, unless you cannot return to work because of a serious health condition or because of other circumstances beyond your control.

If the FMLA leave is for a condition that is covered under the Town's short or long term disability insurance, covered employees may apply for benefit coverage.

Benefit entitlements based on length of service will be preserved at the level earned as of the commencement of the leave, but will not accrue further during the leave period. For example, an employee on leave will not accrue additional sick/personal days.

**Requesting Leave:** If your need for leave is foreseeable such as for the birth of a child or planned medical treatment, you must give the Town Administrator / Department Head at least 30 days' prior written notice. In cases of planned medical treatment, please make efforts to schedule the treatment to avoid disrupting the Town's operations.

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If the need for leave is not foreseeable, you must give notice to Town Administrator / Department Head as soon as practicable (within 1 or 2 business days of learning your need for leave). Failure to provide such notice may be grounds for delaying the leave. If you are not able to notify the Town of Newton of the need for leave personally because of illness, you should ask someone else to call on your behalf.

**Medical Certifications:** If you are on leave because of your own or a covered family member's serious health condition, the appropriate health care provider must supply a medical certification. Please obtain a medical certification form from the Town Administrator for the health care provider to use. If possible, you should provide the medical certification before your leave begins. If that is not possible, you must provide the medical certification within 15 days of beginning your leave. If you do not provide the required medical certification in a timely manner, your leave may be delayed. If certification is not provided at all, the Town Administrator will not be able to determine whether you are eligible for FMLA leave and your leave will be denied.

The Town of Newton, at its expense, may require an examination by a second health care provider designated by the Town. If the second health care provider's opinion conflicts with the original medical certification, the Town, at its expense, may require a third health care provider, agreed upon by the employee and the Town, to conduct an examination and provide a final and binding opinion.

The Town may also require subsequent medical re-certification. Failure to provide requested re-certifications within 15 days may result in delay of further leave.

**Reporting While on Leave:** You must contact the Town Administrator on a regular basis to provide updates about the status of the medical condition and your intention to return to work. In addition, you must give notice as soon as practicable (within two business days if feasible) if the dates of leave change or are extended or initially were unknown.

**No Work While on Leave:** The taking of another job (including self-employment) while on FMLA leave or any other authorized leave may lead to disciplinary action, up to and including termination of employment.

**Returning To Work:** At the end of an authorized FMLA leave, the employee will be reinstated to his or her original position or an equivalent position. However, certain highly compensated employees or "key employees" may be denied restoration to their prior or equivalent position if keeping the job open for the employee would result in substantial economic injury to the Town. Key employees are those employees who are among the highest paid ten percent of employees within 75 miles of the work site.

If you take leave because of your own serious health condition, you will not be reinstated until you provide a fitness for duty certificate from your health care provider confirming that you are medically able to resume work. The return-to-work medical certification forms are available from the Town Administrator.

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**Coordination with Maternity Leave:** As stated in our Maternity Leave Policy, the Town of Newton provides female employees with a leave of absence for the period of temporary physical disability resulting from pregnancy, childbirth, and related medical conditions. A maternity leave begins when an employee is medically determined to be disabled and ends when medically determined to be able to return to work.

Maternity disability will be treated in the same manner as a type D FMLA leave of absence. However, maternity leaves are not limited by any measure other than the period of medical disability. If a maternity disability is for the number of available FMLA leave weeks or less, the employee will be reinstated in accordance with this policy. If a maternity disability exceeds the available FMLA leave weeks, the employee will be reinstated unless business necessity makes reinstatement impossible or unreasonable.

An employee who uses less than the Available Leave Weeks for type D leave for maternity may take additional type A FMLA leave after the end of the disability period for a period not to exceed the Available Leave Weeks.

**Coordination with Other Company Policies; Reference to FMLA and Federal Regulations:** In the event of any conflicts between this policy and other Town policies, the provisions of this policy will govern. The FMLA and the FMLA regulations issued by the U.S. Department of Labor contain many limitations and qualifications that are not stated in this policy. The Town of Newton reserves the right to apply the terms of the FMLA and the FMLA regulations to any individual circumstances.