



RESOLUTION 2012-420
ADOPTED

Item # 4.36
DOC ID: 7860

THIS IS TO CERTIFY THAT THE FOLLOWING RESOLUTION NO. 2012-420 WAS ADOPTED AT THE REGULAR MEETING OF THE SOUTHOLD TOWN BOARD ON MAY 8, 2012:

RESOLVED that the Town Board of the Town of Southold hereby adopts the Town of Southold Family Medical Leave Act (FMLA) Policy, effective immediately, and directs the Accounting Department to distribute copies of the Policy to all employees.

Elizabeth A. Neville
Southold Town Clerk

RESULT: ADOPTED [UNANIMOUS]
MOVER: Albert Krupski Jr., Councilman
SECONDER: William Ruland, Councilman
AYES: Ruland, Talbot, Doherty, Krupski Jr., Evans, Russell

**TOWN OF SOUTHOLD
FAMILY AND MEDICAL LEAVE OF ABSENCE POLICY**

This policy is applicable to all requests for family and/or medical leaves of absence pursuant to the Family and Medical Leave Act of 1993 ("FMLA"), as amended.

An employee who has worked for the Town for at least 12 months within the seven years preceding commencement of the leave and for at least 1,250 hours over the 12 month period prior to the commencement of any covered leave, may be entitled to take up to 12 weeks of unpaid, job-protected leave during a rolling 12 month period (measured backwards from any given leave) for one or more of the following reasons:

- (1) the birth of a child and/or to care for the newborn within one year of birth;
- (2) the placement with the employee of a child for adoption or foster care and/or to care for the newly placed child within one year of placement;
- (3) the care of an employee's spouse, child, or parent with a serious health condition;
- (4) a serious health condition that renders the employee unable to work; or
- (5) any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on "covered active duty" in the Armed Forces or a qualifying veteran. Eligible employees may also be entitled to up to 26 workweeks of leave during a 12 month period for a covered service member with a serious injury or illness incurred in the line of duty if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (known as military caregiver leave). Special provisions apply to military families as set forth below.

Serious Health Condition for Purposes of Non-Military Leave

For purposes of this policy, "serious health condition" is defined by the FMLA. The FMLA provides that a serious health condition includes an illness, injury, impairment or physical or mental condition that involves:

- (1) any period of incapacity or treatment in connection with or consequent to inpatient care (i.e. an overnight stay in a hospital, hospice or residential medical care facility);
- (2) any period of incapacity requiring absence from work, school or other regular daily activities of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

- (a) treatment two or more times by a health care provider, the first of which is within seven (7) days of the initial incapacity and both of which must occur within thirty (30) days of the initial incapacity; or
 - (b) treatment by a health care provider on at least one occasion within seven (7) days of the initial incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider.
- (3) any period of incapacity or treatment for an incapacity due to a chronic serious health condition that requires periodic visits for treatment by a health care provider at least two (2) visits per year, continues over an extended period of time, and may cause episodic incapacity.
- (4) any period of incapacity due to pregnancy or prenatal care.
- (5) any period of permanent long term incapacity due to a condition for which treatment may not be effective, and requiring the continuing supervision of a health care provider.

PROCEDURE FOR REQUESTING NON-MILITARY LEAVE

Notice of Need for Leave

Except as provided in any applicable collective bargaining agreement governing the type of leave requested, an employee requesting either a family or a medical leave pursuant to the FMLA must submit the attached Family or Medical Leave Request Form in writing to the Accounting and Finance Department not less than 30 days before the date the leave is intended to begin. The Town recognizes that unexpected emergencies can arise where it is not possible to provide 30 days' notice of the intended leave. In these situations, the employee is expected to provide as much advance notice as is practicable and to make reasonable efforts, subject to the approval of the health care provider, to schedule treatment so as not to unduly disrupt the Town's operations.

An employee needing family or medical leave because of an unforeseeable event must follow the employer's usual and customary call-in procedures for reporting an absence, as well as applicable collective bargaining agreement requirements.

Notice of Need for Intermittent or Reduced Schedule Leave

Family or medical leave time may be taken intermittently (or on a reduced schedule basis) whenever the leave is medically necessary to care for a seriously ill family member, or because the employee is seriously ill or unable to work. Intermittent leave will not be granted for the birth or placement of a child. An employee requesting intermittent or reduced scheduled leave must submit the attached Application for Family or Medical Leave Request Form (Intermittent Leave). If the need for intermittent leave is foreseeable based on planned medical treatment, the employee is responsible for scheduling the treatment in a manner that does not unduly disrupt the Town's operations. Consequently, the employee must consult with the Accounting and Finance Department

before scheduling this leave. The Town reserves the right to request that the leave be rescheduled. The employee must submit a written medical certification verifying the need for the leave.

Notice of Eligibility and Rights & Responsibilities

In response to an employee's Family or Medical Leave Request Form, the Town will provide the employee with a Notice of Eligibility and Rights & Responsibilities Form, which details whether the employee may be eligible for Family or Medical Leave and the additional information required for the leave to be approved.

Medical Certification

In cases where an employee is requesting medical leave because of the employee's own serious health condition, or that of a spouse, child or parent, the employee must submit the applicable U.S. Department of Labor "Certification of Health Care Provider for Employee's Serious Health Condition" or "Certification of Health Care Provider for Family Member's Serious Health Condition" form, verifying the need for the leave. The Town requests, but does not require, that the employee return a HIPAA medical information release form to the Town so as to expedite the Town's verification of the employee's requested leave. The employee must either furnish a complete and sufficient Certification or furnish the health care provider providing the Certification with any necessary authorization from the employee or the employee's family member in order for the health care provider to release a complete and sufficient certification to the employer to support the employee's FMLA request.

The Town, at its own expense, may require the employee to receive a second opinion from a health care provider designated and approved by the Town. This Opinion will not be by a health care provider regularly used by the Town. If the second opinion conflicts with the first opinion, the Town, again at its own expense, may request a third opinion from a health care provider mutually agreed upon by both the Town and the employee. The third opinion will be binding on both parties.

An employee who fails to provide the Town with a complete and sufficient Certification, after being given the opportunity to cure any deficiencies in the Certification, may be denied FMLA leave. This provision will apply in any case where an employer requests a certification, whether it is the initial certification, a recertification, a second or third opinion, or a fitness for duty certificate, including any clarifications necessary to determine if these certifications are authentic and sufficient.

Recertification

An employee who is on medical leave because of his or her own serious health condition, or to take care of a spouse, child or parent with a serious health condition, may be required to submit to the Accounting and Finance Department no more than once every 30 days written recertification of the need to remain on the leave, on a form provided by the Town. The Town may request recertification on a more frequent basis if:

- (1) the employee requests an extension of leave; or
- (2) changed circumstances occur regarding the illness or injury; or
- (3) the Town receives information that casts doubt upon the continuing validity of the most recent certification; or
- (4) the employee is unable to return to work after exhaustion of medical leave because of the continuation, recurrence or onset of a serious health condition, thereby preventing the Town from seeking reimbursement for group health premiums paid on the employee's behalf during a period of unpaid medical leave.

Return to Work Certification

An employee taking medical leave to care for his or her own serious health condition must submit to the Town an original copy of a Certification signed by the employee's health care provider before returning to work, stating that the employee is able to resume his or her duties.

Unless the employee provides either a fitness-for-duty Certification or a new medical Certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated.

LEAVE FOR MILITARY FAMILIES

Qualifying Exigency Military Family Leave

An FMLA-eligible employee who has a spouse, son, daughter or parent ("the covered military member") who is on active duty (or has been notified of an impending federal call or order to covered active duty) in a foreign country as a member of the Armed Services, National Guard or Reserves, or as a retired member of the Regular Armed Forces, may take up to 12 workweeks of unpaid leave to take care of personal matters related to any of the following:

- (1) short-notice deployment (notice of seven or less days prior to the date of deployment) (leave for this purpose can only be used for a period of seven calendar days beginning on the date a covered military member is notified of an impending call or order to active duty);
- (2) military events and related activities in advance of and during deployment (including family support or assistance programs and informational briefings);

- (3) childcare and school activities which are necessitated by the active duty or call to active duty status of a covered military member (e.g., arranging for alternative childcare or school enrollment, providing childcare on an urgent, immediate need basis or attending meetings at a school or daycare facility for a child of a covered military member);
- (4) financial and legal arrangements (e.g., preparing and executing powers of attorney or a will, or enrolling for military health care);
- (5) counseling (provided by other than a health care provider, for oneself, the covered military member or child for reasons related to the active duty or call to active duty status of a covered military member);
- (6) short-term, temporary rest and recuperation leave of the covered military member during the period of deployment (up to five days for each instance);
- (7) post-deployment activities (e.g., attending ceremonies and briefings for a period of up to 90 days following the termination of the covered military member's active duty status or addressing issues arising from a covered military member's death); and
- (8) additional activities agreed to by the Town and employee.

For the purposes of qualifying military exigency leave only, the definition of a child of a covered military member includes a biological, adopted, or foster child, a stepchild, a legal ward of the covered military member, or a child for whom a covered military member stands in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time the leave is to commence.

A "son or daughter on active duty or call to active duty status" means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.

Qualifying military exigency leave may be taken intermittently or on a reduced leave schedule.

In the case where the need for qualifying military exigency leave is foreseeable, the employee shall provide the Town with as much advance notice as is reasonable and practicable.

The first time that an eligible employee requests qualifying military exigency leave, the employee must provide the Town with a copy of the covered military member's orders or other military documentation showing the covered military member's call to active duty and expected dates of active duty service. In addition, for each

qualifying military exigency leave requested with regard to that covered military member, the employee must provide the Town with written Certification of Qualifying Exigency for Military Family Leave that includes, among other information, the reason and anticipated duration of leave. The Department Of Labor's Certification of Qualifying Exigency for Military Family Leave form will be provided by the Town for this purpose when a request for qualifying military exigency leave is made.

Military Caregiver Leave

An eligible employee who is the spouse, son, daughter, parent or next of kin (as that term is defined by the FMLA regulations issued by the U.S. Department of Labor) of a "covered service member" is entitled to up to 26 workweeks of leave during a single 12-month period to care for the covered service member.

A covered service member is defined as a current member of the Regular Armed Forces, or the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty, or a pre-existing condition aggravated by service in the line of duty on active duty, that renders the member medically unfit to perform the duties of the member's military office, grade, rank or rating, and who is undergoing medical treatment, recuperation or therapy, is in military outpatient status, or otherwise on the temporary (as opposed to permanent) disability retired list.

The term "covered service member" also includes a veteran (defined as a person who served in the active military, Naval or Air Service and who was discharged or released under conditions other than dishonorable) who is undergoing medical treatment, recuperation or therapy for a qualifying injury or illness that was incurred in the line of duty 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 duty on active service in the Armed Forces) and which manifested itself before or after the member became a veteran, and who was a member of the Armed Forces (including the National Guard or Reserves) at any time during the five years preceding the date upon which the veteran undergoes the medical treatment, recuperation or therapy that triggers the need for the military caregiver leave.

An eligible employee is only entitled to take the leave during one 12-month period measured forward from the date the leave begins. If an eligible employee does not take all 26 workweeks of leave during this period, the remaining weeks are forfeited. Additional leave may be taken in other 12-month periods for another covered service member or for the same covered service member with a subsequent injury or illness. Eligible employees may still take up to 12 workweeks of FMLA leave for another covered purpose during the same time period, but the total amount of leave (including military caregiver leave) during that 12-month period may not exceed 26 workweeks. Leave that qualifies as both military caregiver leave and traditional FMLA leave for a family member with a serious health condition will be designated as military caregiver leave.

In the context of military caregiver leave, the terms "son or daughter of a covered service member" are defined as the service member's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age. A "parent of a covered service member" is defined as a covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member. The term does not include parents-in-law.

Eligible employees who request to take military caregiver leave will be required to provide certification from the service member's authorized health care provider. A Certification for Serious injury or Illness of Covered Servicemember for Military Family Leave form will be provided by the Town for this purpose. In lieu of this certification, an eligible employee may provide the invitational travel order (ITO) or invitational travel authorization (ITA) issued by the Federal government to the employee or any family member to join an injured or ill service member at his or her bedside. Second and third opinions and re-certifications will not be requested for military caregiver leave.

RULES

Substitution of Paid and Unpaid Leave

An employee taking leave pursuant to the FMLA will be required to use any accrued paid sick leave, compensatory time, personal leave and/or vacation leave, concurrently with his or her family or medical leave in the order set forth in any applicable collective bargaining agreement, unless otherwise required by an applicable collective bargaining agreement. This paid leave time shall count towards the 12 weeks of leave permitted by this Policy. The remainder of the 12 week entitlement under the FMLA, if any, will be unpaid. The employee will be notified in writing of any accrued time that will be counted toward the 12 weeks of FMLA leave.

Any unpaid leave available pursuant to a collective bargaining agreement or other Town policy that is available for purposes consistent with FMLA purposes must also be used. This leave will be counted towards the employee's 12 week FMLA entitlement.

Intermittent and Reduced Schedule Leave

The Town reserves the right to transfer temporarily an employee on an intermittent or reduced schedule leave to an alternative position which better accommodates recurring periods of absence or a part-time schedule. The position to which the employee is transferred will be equivalent in pay and benefits to the one that the employee held prior to the transfer.

Status of Benefits While on Leave

While an employee is on leave pursuant to this Policy, (s)he will continue to be covered by the Town's group health plans in effect at the time and so chosen by the employee, so long as the employee continues to pay the employee portion of the premium

costs, if any. If paid leave is used for any portion of the family or medical leave, employee premiums will be deducted from the salary payments in accordance with the practice applicable to active employees. The failure of an employee on unpaid leave to pay his or her portion of the premiums by the end of the grace period stated in the written instructions provided by the Town will result in the loss of the insurance coverage.

An employee who fails to return to work for at least 30 calendar days following the expiration of an unpaid family or medical leave shall reimburse the Town for the portion of the health care premiums paid by the Town during the unpaid 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 Benefits and Position at the Conclusion of Leave

An employee on family or medical leave is not entitled to accrue any seniority or employment benefits during any period of leave except as expressly stated herein, or as otherwise provided by law or contract. At the conclusion of an employee's family or medical leave, in most cases 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. When the employee returns to active work following the family or medical leave, any benefits that lapsed during the leave shall be reinstated as if the employee had remained actively employed during the leave, except that the employee shall not accrue any additional benefits or seniority during the time of the leave (e.g., no accrual of additional vacation time while on leave of absence).

Key Employees

Under certain circumstances, the Town may deny job restoration to a key employee. A key employee is a salaried employee eligible to take leave pursuant to this Policy who is among the highest paid ten percent of all the employees, both salaried and non-salaried, eligible and ineligible pursuant to this Policy, who are employed by the Town. The Town may refuse to reinstate a key employee 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 or she will not have a right to be restored to employment.

Continuation of Leave

Once family and medical leave is exhausted, including any accrued paid leave which the Town requires an employee to use as part of a family or medical leave of absence, an employee may be eligible for additional leave pursuant to another Town leave policy, applicable collective bargaining agreement and/or state law. The reinstatement of an employee, and the employee's right to continue group health

coverage by only paying the employee's portion of the premiums (and any other benefit rights listed in this Policy) are, however, protected only for the 12 work weeks of family and medical leave, unless otherwise provided by applicable contract, collective bargaining agreement, policy or State law.

RESERVATION OF RIGHTS

The Town will comply with all legal requirements for providing family and medical leave to eligible employees. To the extent the law permits employer discretion, the Town hereby expressly reserves the right to modify, change or eliminate any provision of this policy subject to applicable law (*e.g.*, Taylor 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.

To the extent a collective bargaining agreement provides greater family and medical leave rights to an employee than the rights established pursuant to this Policy, the rights granted to the employee in the collective bargaining agreement will govern the family and medical leave of the employee.

Nothing in this policy shall be deemed to limit an employee's or the Town's rights or obligations with respect to leave for disability under New York Civil Service Law or any other applicable statutory or contract provision.

APPLICATION FOR FAMILY OR MEDICAL LEAVE REQUEST FORM

Name: _____ Department: _____

Current Address: _____

Start Date of Anticipated Leave: _____

Expected Date of Return to Work: _____

Reason for Leave (Explain): _____

NOTE: A leave request based on an employee's serious health condition or the serious health condition of an employee's spouse, child or parent, must be accompanied by a verifying medical certification from a physician.

I understand that I am expected to return to work at the end of my leave period unless an extension has been agreed upon and approved in writing by the Town.

Signature: _____ Date: _____

APPROVED BY:

Supervisor

APPLICATION FOR FAMILY OR MEDICAL LEAVE REQUEST FORM
(Intermittent Leave)

Name: _____ Department: _____

Current Address: _____

Dates and Lengths of time of Anticipated Leave: _____

Reason for Leave (Explain): _____

NOTE: An intermittent or reduced schedule leave request based upon an employee's serious health condition or the serious health condition of an employee's spouse, child or parent, must be accompanied by a verifying medical certification from a physician (as per the attached Certification of Health Care Provider form).

I understand that I am expected to report for work on a full-time basis except for the periods of intermittent or reduced schedule leave, and I am expected to return to work on a full-time basis at the end of my intermittent or reduced schedule leave period unless an extension has been agreed upon and approved in writing by the Town.

Signature: _____

Date: _____

APPROVED BY:

[Title]

FMLA Forms

Eligibility

Form WH-381 -- Notice of Eligibility and Rights & Responsibility
[Available at: <http://www.dol.gov/whd/forms/WH-381.pdf>]

Certification

HIPAA Release Form
[Available at: http://www.nycourts.gov/forms/hipaa_fillable.pdf]

Form WH-380-E-- Certification of Health Care Provider for Employee's Serious Health Condition / Fitness-for-Duty Form
[Available at: <http://www.dol.gov/whd/forms/WH-380-E.pdf>]

Form WH-380-F -- Certification of Health Care Provider for Family Member's Serious Health Condition / Fitness-for-Duty Form
[Available at: <http://www.dol.gov/whd/forms/WH-380-F.pdf>]

Designation

Form WH-382 -- Designation Notice
[Available at: <http://www.dol.gov/whd/forms/WH-382.pdf>]

Military Leave

Form WH-384 -- Certification of Qualifying Exigency for Military Family Leave
[Available at: <http://www.dol.gov/whd/forms/WH-384.pdf>]

Form WH-385 -- Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave
[Available at: <http://www.dol.gov/whd/forms/WH-385.pdf>]