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## FAMILY & MEDICAL LEAVE ACT (FMLA)

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### I. POLICY

The Town of Davidson complies with the Federal Family and Medical Leave Act (FMLA). FMLA grants the right for an employee, who meets the medical eligibility criteria outlined in this policy, to take a leave of absence of up to twelve (12) weeks in a year, defined as a 12-month period measured forward from the date the employee's first FMLA leave begins, or up to twenty-six (26) weeks of military caregiver leave to care for a covered service member with a serious injury or illness. The FMLA assures that eligible employees are entitled to be restored to the same or equivalent position as they held when the leave started and that an employee's group health benefits will be maintained during the leave. The FMLA does not provide paid leave for the employee while in FMLA status. As a prerequisite to receiving unpaid leave, employees must exhaust leave the following order (1) compensatory, (2) vacation and (3) sick leave.

*Federal Regulation 29 CFR Part 825*

### II. PURPOSE

The Town of Davidson's Family and Medical Leave Act (FMLA) policy recognizes the importance of an employee's ability to balance work and family life. The policy also recognizes that the Town has an operational interest in serving the Town's residents and customers. This policy is written to encourage proactive planning and on-going communication about an employee's family medical needs.

### III. PROCEDURE

#### A. Eligibility Requirements

**(1) Hours Worked:** Employees are eligible for Family Medical Leave if they have been employed by the Town for at least twelve (12) months and have worked at least 1,250 hours in the twelve (12) months preceding the start of the leave. Military leave counts as hours worked.

**(2) Qualifying Reason (12 Weeks):** Eligible employees may request up to twelve (12) weeks of Family Medical Leave for the following reasons:

- a. **Birth or Placement of Child:** Employees may request a Family Medical Leave to provide care for a child following the child's birth, adoption or foster

placement in the employee's home. This leave must conclude twelve (12) weeks after the child is born, adopted, or placed in the employee's home.

- b. **Illness of a Family Member:** Employees may request Family Medical Leave to provide care for a child, parent or spouse who has a serious health condition as certified by a licensed physician.
- c. **Illness of an Employee:** Employees may request Family Medical Leave if they are unable to work due to their own serious health condition as certified by a licensed physician.
- d. **Qualified Exigency Leave for Families of Members of the National Guard or Reserves or of a Regular Component of the Armed Forces:** An employee whose spouse, son, daughter or parent has been notified of an impending call or order to covered active military duty or who is already on covered active duty may request Family Medical Leave as certified by the call-up notice. This type of leave may commence as soon as the individual receives the call-up notice.

**(3) Qualifying Reason:** Eligible employees may request up to twenty-six (26) weeks of Family Medical Leave for the following reason:

- a. **Military Caregiver Leave:** Employees may request a leave of absence to care for an injured or ill covered service member or veteran. An employee whose son, daughter, parent, or spouse, is a covered service member or an employee who is the next of kin of a covered service member, may take up to twenty-six (26) weeks in a single 12-month period to care for that service member. An employee who has used twenty-six (26) weeks of Military Caregiver Leave is not entitled to an additional twelve (12) weeks of Family Medical Leave, for other qualifying reasons, that may occur later that in the year.

## **B. Leave Duration**

**(1) Up to Twelve (12) Work Weeks:** For the birth, adoption or placement of a child, serious health condition of the employee or the employee's qualifying family member; or due to a qualifying exigency.

**(2) Up to Twenty-Six (26) Work Weeks:** To care for an injured service member.

**(3) Intermittent Leave:** Family Medical Leave can be taken intermittently or on a reduced work schedule if there is a medical need. The employee should make a reasonable effort to schedule treatment so as not to unduly disrupt the operations of the Town. Whenever possible, employees should provide notice to their immediate supervisor prior to scheduling any medical treatment in order to allow for operational and staffing needs. Supervisors do not have authority to deny requests for Family Medical Leave under any circumstances, even if the employee does not notify them in advance of their medical treatment. When an employee takes leave on an

intermittent or reduced leave schedule, only the amount of leave actually taken may be counted toward the employee's intermittent leave entitlement. Time taken must be reported on the employees timecard and tracked by Human Resources. Arrangements for intermittent leave may be made using the following schedule accommodations:

- a. **Incremental Leave:** Unplanned increments of hours or days that an employee is absent from work due to a qualifying reason as defined in this policy.
- b. **Reduced Hours Leave:** A reduction in an employee's usual number of working hours per work week or per work day to accommodate scheduled appointments or leaves of absences.
- c. **Change Schedule:** A change in an employee's regular work schedule for a period of time.
- d. **Temporary Reassignment:** In cases where intermittent leave or a reduced schedule has been approved, the Town reserves the right to temporarily reassign the employee with no loss of pay or benefits to a different job or to a part-time position for the duration of the leave, whichever better accommodates the employee's need for leave and the department's operational needs.
- e. **Workers Compensation:** Will run concurrently with worker's compensation leave during a work-related injury/illness when an employee qualifies for intermittent Family Medical Leave.

## C. Application Process

### (1) When to Apply for Family Medical Leave

- a. **Foreseeable Leave:** Employees seeking to use Family Medical Leave are required to provide a 30-day advance notice of the need to take Family Medical Leave when the need is foreseeable and such notice is practical. If leave is foreseeable, less than 30 days in advance, the employee must provide notice as soon as practical – generally, either the same or the next business day.
- b. **Non-Foreseeable Leave:** When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practical under the facts and circumstances of the particular case.

### (2) Application Submission

- a. **Gather Information:** In order to prepare for their leave, employees should contact Human Resources immediately to discuss the Family Medical Leave application and medical certification process. The employee must also notify the employee's immediate supervisor of the employee's need for Family Medical Leave.

- b. **Submit Application:** Family Medical Leave application forms must be submitted to Human Resources for approval. Refer to the Medical Certification section (Section 6) of this policy for information about the certifications that are required before and during a Family Medical Leave.
- c. **Submit Certifications:** As stated in the Medical Certification section of this policy, the Town requires that an employee's request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification from a licensed physician. The employee must provide a complete and sufficient certification within fifteen (15) days of the request.
- d. **Await Response:** Human Resources will provide a written response within five business days to an employee who submits a complete Family Medical Leave application.
- e. **Explanation:** If an employee is eligible for Family Medical Leave, the Town will specify any additional information required as well as the employee's rights and responsibilities. If the employee is not eligible, the Town will provide a reason for the ineligibility. Human Resources will inform employees if leave will be designated as Family Medical Leave.

### (3) Approval Notification

- a. Once Family Medical Leave is approved for an employee, Human Resources will notify the Department Head and Finance Department.

### (4) Town Initiated FMLA Placement

- a. **Three Days:** Leave may be designated as Family Medical Leave when a qualifying event requires the use of three (3) consecutive days of sick leave.
- b. **Retroactive Designation:** For leave that has not previously been designated as Family Medical Leave, the Town may initiate or employees may request that those prior absences be designated retroactively as Family Medical Leave by notifying Human Resources within two (2) business days of their return to work and providing appropriate documentation. This does not apply to previously designated intermittent leave.
- c. **Notification:** Human Resources will notify employees who are placed on Family Medical Leave as soon as practical.

### (5) Pay and Benefits

- a. **Use of Leave Pay:** Employees must exhaust paid leave benefits in the following order (1) compensatory time, (2) vacation and (3) sick. An employee will only earn leave while on unpaid Family Medical Leave if the employee is in paid status.

*Cross-Reference: Health Insurance Coverage  
and Payment Policy*

- b. Maintenance of Benefits:** During an approved leave the Town will continue to pay the employers' share of benefits including healthcare insurance premium and disability insurance in accordance with the Town's Health Coverage and Payment Policy. Employees are responsible for any deductions they have withheld from their paycheck including dependent healthcare premiums, dental insurance, voluntary disability coverage, retirement, garnishments and miscellaneous deductions.

  - i.** If the employee's paycheck is not sufficient to pay for the deductions the Town will not pay them on behalf of the employee.
  - ii.** Employees may make arrangements with the Town for payments of medical, dental, life, and disability deductions.
- c. Timesheet Meeting:** Employees should work with the Department Head and Human Resources to complete timesheet(s) prior to their leave to the extent that is possible.
- d. Payroll and Human Resources Consultation:** Questions about salary, benefits, and payroll deductions during an employee's Family Medical Leave should be referred to Human Resources.
- e. Family Medical Leave Designation for Holidays:** If an employee is on Family Medical Leave and is in paid status (including during intermittent leave) the day before and day after a town-recognized holiday falls, the employee is entitled to holiday pay. Otherwise, if the employee is on Family Medical Leave and in unpaid status, the employee is not entitled to holiday pay. Holidays that occur during the employees Family Medical Leave will count against the employee's Family Medical Leave time and cannot be used to extend the leave period.
- f. Sick and Vacation Accrual:** If an employee is in paid status sick and vacation will continue to accrue. If the employee is in unpaid status accruals will not continue.

**(6) Medical Certification**

- a. Initial Medical Certification:** The Town requires that an employee's request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification from a licensed physician. The physician for initial certification is determined by the employee.
- b. Intermittent Leave - Second and Third Opinion Certifications:** The Town

may require, at its expense, the opinion of a second licensed physician. If the second opinion differs from the first opinion, the Town may require, at its expense, the opinion of a third licensed physician, designated or approved jointly by the employer and employee. The third licensed physician opinion is final and binding on the employer and employee. The employer and the employee must act in good faith in agreeing on a third opinion provider. The Town will provide a copy of any second or third opinions to the employee on the employee's request.

- c. **Intermittent Leave - Re-Certification:** The Town may require medical re-certification if the circumstances of the initial medical certification have changed. In addition, the Town may require that a doctor certify that the employee's condition is incapacitating enough to warrant the days an employee was absent during a preceding period of time. Re-certifications are to be obtained at the employee's expense.

Example: If absences become more frequent than described in the initial medical certification or if a pattern emerges of absences around a weekend, scheduled days off, or surrounding holidays, the Town may require a second medical opinion to re-evaluate the employee's FMLA needs.

- d. **Incomplete Certifications:** When the town requests a medical certification, the employee must provide a complete and sufficient certification within 15 days of the request. If the town deems the certification to be incomplete and/or insufficient, the town may advise the employee of such deficiency and state in writing what additional information is necessary to make the certification complete and sufficient. The employee has seven additional (7) days from the date of notification of the insufficiencies to re-submit a complete and sufficient certification.

## (7) **Fitness-For-Duty Certification**

- a. **Safety Concerns:** If reasonable safety concerns exist, an employer may, under certain circumstances, require such a certification for employees returning from Family Medical Leave. This certification will be made by the employee's preferred health care provider with regard to the particular health condition that caused the employee's need for Family Medical Leave. The cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification. The certification must specifically address the employee's ability to perform the

essential functions of the employee's job. The town will provide the employee with a list of the essential functions of the job no later than with the designation notice required by C.F.R. 825.300(d). Furthermore, following the procedures set forth in C.F.R. 825.307 (a), the employer may contact the employee's health care provider for the purposes of clarifying and authenticating the fitness-for-duty certification. The town will not delay the employee's return to work while contact with the health care provider is being made. If the employee has been cleared for duty by the health care provider, the employment will be reinstated. All applicable laws under 29 C.F.R. 825.312 will apply.

- b. **Certification Requirements:** The designation notice required in C.F.R. 825.300(d) shall advise the employee if the employer will require a fitness-for-duty certification to return to work and whether that fitness-for-duty certification must address the employee's ability to perform the essential functions of the employee's job.
- c. **Delay of Reinstatement:** The town may delay restoration to employment until an employee submits a required fitness-for-duty certification unless the employer has failed to provide the notice required C.F.R. 825.300(d). If the town provides the notice required, an employee who does not provide a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA.
- d. **Intermittent or Reduced Leave:** If reasonable safety concerns continue to exist regarding the employees ability to perform his or her duties, based on serious health condition for which the employee took such leave, the town will require a certification of fitness-for-duty once every 30 days. The town will inform the employee at the time it issues the designation notice that for each subsequent instance of intermittent or reduced schedule leave, the employee will be required to submit a fitness-for-duty certification unless one has already been submitted within the past 30 days. The town will not terminate employment while awaiting such certification of fitness-for-duty for an intermittent or reduced schedule leave absence.
- e. **Second and Third Opinion:** If the employee has been reinstated, the town is entitled under Americans with Disabilities Act (ADA) to a medical examination if safety concerns continue to exist. The medical examination must only address the essential job functions the employee is required to perform. The employee will continue to be reinstated while all medical examinations are completed at the expense of the town. All applicable Genetic Information Nondiscrimination Act of 2008 (GINA) laws will apply.

#### **D. Return to Work**

**(1) Return to Work:** The town shall comply with all applicable parts of the Americans with Disabilities Act (ADA) and with all appropriate parts of the Family and Medical Leave Act (FMLA) and applicable state laws to make every effort to bring injured employees or employees

with medical conditions back to work as long as this will not cause any harm to the employee, others, or town property.

**(2) Job Reinstatement:** Eligible employees are entitled to be restored to the same or an equivalent position as they held when the leave started.

**(3) Failure to Return:** Following Family Medical Leave, employees who do not return to work at the time agreed upon will be considered to have voluntarily resigned from employment with the town.

**(4) Resuming Work Certification:** As stated in the fit-for-duty of this policy, if safety concerns exist, the town may require such a certification for an employee after returning from Family Medical Leave.

**(5) Extended Medical Leave:** In accordance with town policies and procedures, employees not able to return to work after using all Family Medical Leave benefits may request Medical Leave. Additional leave beyond Family Medical Leave will require the approval of the Town Manager.

*Cross-Reference: Medical Leave Policy*

**(7) Termination:** Termination of employment may occur while an employee is on leave as the result of a reduction in force, detrimental performance or if the employee is unable to perform one or more of the essential functions of the position, with or without reasonable accommodation.

#### **E. FMLA Records**

**(1) Report Family Medical Leave:** During the sick leave notification process, employees must report if their absence is due to their Family Medical Leave condition.

**(2) Medical Information Confidentiality:** Any Family Medical Leave documents containing medical information shall immediately be forwarded to Human Resources. All Family Medical Leave medical records are confidential and will only be maintained by Human Resources. No medical information submitted as part of the FMLA requirements shall be maintained by other town departments.

**(3) Tracking FMLA Time:** Employees are responsible for reporting to Human Resources that their time off was due to Family Medical Leave.

#### **IV. FORMS / INSTRUCTIONS**

Family Medical Leave requests and medical certification forms may be obtained from Human Resources and U.S. Department of Labor (DOL).

#### **V. ADDITIONAL CONTACTS**

## VI. DEFINITIONS

**A. Spouse:** A husband or wife as defined or recognized under federal law for purposes of marriage.

**B. Parent:** A biological, adoptive, step or foster father or mother, or any individual who stood in as a parent when the employee was a son or daughter. The term “parent” does not include parents “in law” (e.g. mother-in-law or father-in-law).

**C. Son or Daughter:** A biological, adopted, or foster child; a step-child; a legal ward; or a child of a person standing in loco parentis, who is either under age eighteen (18), or age 18 or older and “incapable of self-care because of a mental or physical disability” at the time that Family Medical Leave is to commence.

**D. Next of Kin of a Covered Service Member:** The nearest blood relative of that individual other than the covered service member’s spouse, parent, son or daughter in the following order of priority: blood relatives who have been granted legal custody of the covered service member, brothers and sisters, grandparent, aunts and uncles, and first cousins unless the covered service member has designated in writing a specific blood relative as his or her next of kin for purposes of military caregiver leave under the FMLA.

**E. Covered Service Member:** 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; or a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness and who was a member of the Armed Forces, including the National Guard or Reserves, at any time during the period of five years preceding the date of which the veteran undergoes that medical treatment, recuperation or therapy.

**F. Covered Military Member:** An employee’s spouse, son, daughter or parent who is on active federal military duty or has been called to active federal military duty status for the United States Armed Forces.

### **G. Qualifying Exigency – Includes:**

- (1) **Short Notice Deployment:** To address issues arising when a covered military member is called to active duty within seven days or less of such deployment. Leave for a short notice deployment may be taken for seven calendar days or less beginning on the date of the covered military member’s notice of such leave;
- (2) **Military Events and Related Activities:** To attend official ceremonies, programs or events sponsored by the military that are related to the active duty status of a covered military member, to attend programs and informational briefings sponsored or promoted by the military, military organizations or the American Red Cross that are related to active duty status of a covered military member;

- (3) **Childcare and School Activities:** To arrange for or to provide urgent childcare when the call to active duty of a covered military member necessitates a change in an existing childcare arrangement for a covered military member's child; to enroll in or transfer to a new school a covered military member's child; and to attend meetings with school or daycare staff of a covered military member's child;
- (4) **Financial and Legal Arrangements:** To make or update financial or legal arrangements to address the covered military member's absence while on active duty or to act as the covered military member's representative for the purpose of obtaining benefits;
- (5) **Counseling:** To attend counseling for the covered military member or a covered military member's child;
- (6) **Rest and Recuperation:** To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during a period of deployment. Eligible employees may take up to five (5) days of leave for rest and recuperation during the twenty-six (26) week period;
- (7) **Post-Deployment Activities:** To attend official ceremonies or program sponsored by the military in the ninety (90) days following the termination of the covered military member's active duty status or to address issues that arise from the death of a covered military member; and
- (8) **Additional Activities:** To address other events that arise out of the covered military member's active duty or call to active duty provided that the town and employee agree that the leave shall qualify as an exigency and agree to the timing and duration of such leave.

**H. Serious Injury or Illness in the Case of a Member of the Armed Forces:** An injury or illness that was incurred by the member in the line of duty while on active duty in the Armed Forces (or existed before the beginning of the member's duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

**I. Serious Health Condition:** A condition that requires inpatient care at a hospital and/or a residential medical care facility or a condition that requires continuing care by a licensed physician.

**J. Serious Injury or Illness in the Case of a Veteran who was a Member of the Armed Forces at any time During a Period when the Person was a Covered Service Member:** A qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

**K. Outpatient Status:** The status of a covered service member assigned to either a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control to members of the United States Armed Forces receiving care as outpatients.

**L. Intermittent Leave:** Leave that is not taken consecutively or leave taken on a reduced schedule. Examples of intermittent leave might be leave that is taken spread over a period of months.

**M. Pay Status, Full-Time Positions:** A full-time employee is considered to be in “pay status” if the employee’s work hours and/or use of paid leave for a pay period are equivalent to at least 50% of regular working week.

**N. Pay Status, Part-Time Positions:** A part-time employee is considered to be in “pay status” if the employee’s work hours and/or use of paid leave for a pay period is equivalent to at least 50% of the employee’s regular working week. For the purposes of this policy only part-time employees working over 1,250 annually qualify for this benefit.

**O. Unpaid Status:** An employee is considered to be in unpaid status if the employee’s work hours and/or use of paid leave for a pay period are less than 50% of that employee’s regular working week.

**P. 26 Week Period:** For purposes of FMLA military family leave applicable to a qualifying condition, means twenty-six (26) work weeks of leave during a single 12-month period of care for the service member. Twenty-six (26) work weeks is the maximum amount of Family Medical Leave in a single 12-month period and cannot be combined with an additional twelve (12) weeks for other Family Medical Leave reasons.

**Q. Unexcused Absence:** A supervisor may consider an absence as unexcused if the employee fails to comply with the Sick Leave policy.

**R. 12 Month Period:** The 12-month period measured forward from the date an employee’s Family Medical Leave begins.

## **VII. RELATED INFORMATION**

### **A. Family and Medical Leave Act (FMLA) of 1993 and Amendments**

**B. Coordination with Additional Policies:** Depending on the circumstances of the employee’s situation, the provisions of this policy may interact with other provisions in the Medical Leave Cluster of personnel policies as well as health insurance and disability benefits offered by the town (see lists below). Employees should consult with Human Resources for more information.

## **VIII. SCOPE**

As of October 23, 2017 this policy replaces and supersedes any previous policies or unwritten policies or practices covering the same subject.

## **IX. AUTHORIZATION**



Jamie Justice  
Town Manager