

TOWN OF BERKLEY
FAMILY, MEDICAL AND SMALL NECESSITIES LEAVE POLICY

I. PURPOSE

This Policy describes the eligibility, duration and procedural requirements relating to the administration of leave taken pursuant to the Family and Medical Leave Act (“FMLA”), 29 U.S.C. § 2612, eq seq., and the Small Necessities Leave Act (“SNLA”), G.L. c. 149, § 52D.

II. APPLICATON

This Policy applies to all employees of the Town of Berkley, excluding those employees under the supervision and control of the School Committee. Employees whose employment is governed by a collective bargaining agreement are subject only to those provisions of this Policy not specifically regulated by law or agreement.

III. POLICY

The Town is committed to comply with the FMLA and SNLA, as they may be amended from time to time. In the event of a conflict between the Town’s FMLA/SNLA policy and applicable federal or state law and regulations, said federal/state law and regulations applicable to the Town and its employees shall prevail.

IV. PROCEDURES

A. Family and Medical Leaves of Absence

1. The FMLA allows eligible employees up to twelve (12) weeks of unpaid leave, and in limited cases up to twenty-six (26) weeks of unpaid leave¹ (“FMLA Leave”) per year, under the circumstances outlined below. Employees may take leave for reasons including:
 - Birth of the employee’s child or placement of a child with the employee through adoption of foster care;
 - The employee is needed to care for a child, spouse, or parent who has a serious health condition; or
 - The employee is unable to perform the functions of his or her position because of a serious health condition; or
 - Military service-related leaves.

¹ Twenty-six weeks of leave is available only to employees who are eligible for such leave to care for a covered service member who is seriously injured or ill as a result of a certain military service, as defined by the FMLA

- a. Leave for Exigent Circumstances: leave when an employee has a close family member (spouse, son, daughter or parent) who is called to covered active military duty for “any qualifying exigency”; the leave must be for

nondomestic military service and applies equally to the families of active-duty military and reservists (when called to duty)

- b. Leave to Care for a Covered Servicemember: leave for an employee to care for a close family member in military service (up to twenty-six (26) weeks of leave).

The terms “serious health condition” and “seriously injured or ill” are defined by law and generally refer to in-patient care, and in some instances out-patient care, by a medical provider.

2. Use of Paid Leave

Employees are required to use certain types of accrued or available paid leave concurrently with the FMLA leave. Employees who take leave because of the birth or placement of a child, for their own serious illness, to care for a spouse, parent or child, to care for a covered servicemember or leave for exigent circumstances, must use all accrued sick, vacation and personal time. Once the paid leave is exhausted, the remainder of the FMLA leave will be unpaid.

In appropriate instances, an employee on Workers Compensation leave will also be designated as on FMLA leave concurrently. In accordance with the Town’s Policy with respect to on-the-job injuries, an employee on Workers Compensation leave will be required to use accrued paid leave to supplement his/her workers compensation benefits, so that the employee receives a total of 100% of his/her regular compensation through the combination of Workers Compensation benefits and use of the accrued paid leave, until that accrued paid leave is exhausted. Sick leave will be used first, and when that time is depleted, personal and vacation time will then be used. No more than two days of sick time will be used per week.

3. Eligibility

To be eligible for FMLA leave under this policy, an employee must have been employed by the Town for at least twelve months (which do not need to be consecutive, provided no break in service exceeds seven years), and must have worked at least 1250 hours during the twelve-month period preceding the commencement of the leave. The 1250 hours means actual hours worked, and does not include time spent on paid or unpaid leave.

4. Conditions

- a. *Length of Leave.* In most instances, employees may take no more than twelve weeks (or up to twenty-six weeks to care for a covered servicemember) of FMLA leave in a twelve-month period. The twelve-month period is defined as the 12-month period measured forward from the first date and employee takes FMLA leave. Unless otherwise qualifying by law, if both spouses are employed by the Town, they are together entitled to a total of twelve weeks of leave for the birth of placement of a child, care of a sick parent, or due to a qualifying exigency

arising out of a son, daughter, or parent being called to active duty, or a total of twenty-six weeks to care for a covered injured or ill servicemember.

An employee eligible to take leave to care for a covered servicemember may not take more than twenty-six weeks of leave in any twelve-month period, in total, regardless of the reason of the leave. Moreover, unlike other forms of leave (as discussed in the preceding paragraph), leave to care for a covered servicemember starts as the employee first takes leave.

- b. *Notice.* Employees wishing to take FMLA leave must give 30 days' notice of foreseeable event. If the event giving rise to the need for leave is not foreseeable, then the employee must give such notice as is practicable under the circumstances. Employees must schedule planned medical treatments with due regard for the Town's operational needs.
- c. *Accrual of Certain Benefits while on an FMLA leave.* Employees on an FMLA leave of absence do not accrue holiday, vacation, personal or sick time leave or benefits.

5. Certification

Employees requesting FMLA Leave within fifteen (15) days must provide medical certification to support a claim for leave for an employee's own serious health condition or to care for a seriously ill child, spouse, parent, or covered servicemember. The medical certification must set forth: the date on which the servicemember, commenced; the probable duration of the condition; and, the appropriate medical facts within the knowledge of the health care provider regarding the condition. Periodic re-certifications may be required, as permitted by law. In some limited circumstances, the Town may require a second medical opinion, at its own expense.

6. Reduced Schedule of Leave

If medically necessary for a serious health condition of the employee or his or her spouse, child or parent, of the serious illness or injury of a covered servicemember, leave may be taken on an intermittent or reduced leave schedule. If leave is requested on this basis, the Town may require the employee to transfer temporarily to a position, with equivalent compensation, which better accommodates recurring periods of absence or a part-time schedule.

7. Benefits

- a. *Health Coverage.* Employees on leave are entitled to the continuance of group health coverage under the same conditions they received coverage prior to the leave. Employees who contribute to their health insurance premiums via payroll deduction must arrange to pay the premium contributions during the period of unpaid absence, if they wish to retain

coverage. In the event that an employee elects not to return to work upon completion of an approved unpaid leave of absence, the Town may recover from the employee the cost of any payments made to maintain the employee's coverage, unless the failure to return to work was for reasons beyond the employee's control.

- b. *Other Benefits.* Benefits based upon length of service will be calculated as of the last paid work day prior to the start of the unpaid leave of absence. Employees do not accrue sick, vacation or personal time while on unpaid leave.

8. Return to work

Employees returning from FMLA Leave in accordance with this policy will be restored to their original positions, or to equivalent positions with equivalent pay and benefits. Employees should contact the personnel department and their supervisors at least two weeks before their return date to make arrangements.

9. Posting

The Town shall post the attached document prepared by the U.S. Department of Labor summarizing the major provisions of the FMLA.

B. Small Necessities Leaves of Absence

1. The Small Necessities Leave Act ("SNLA"), enacted in Massachusetts in 1998, allows eligible employees twenty-four (24) hours of unpaid leave during a twelve-month period for employees to attend to family obligations. Employees may take leave for the following reasons:

1. To participate in school activities directly related to the educational advancement of the employee's child, such as a parent-teacher conferences or interviewing for a new school;
2. To accompany the employee's child to routine medical or dental appointments, such as checkups or vaccinations; or
3. To accompany an elderly relative of the employee to routine medical or dental appointments or for other professional services related to the elder's care, such as interviewing at nursing or group homes.

2. Use of Paid Leave

Employees are required to substitute paid leave for leave under the SNLA to the extent that the event occasioning SNLA leave is one that would entitle the employee to paid leave under the Town's policies. Personal and vacation time, if available, must be used as part of SNLA leave. However, the use of sick time for SNLA leave will be available only to the extent that such use would otherwise be permissible under the Town's policies or applicable Collective Bargaining Agreement.

3. Eligibility

TO be eligible for SNLA leave under this policy, an employee must be eligible for FMLA leave, as described above.

4. Conditions

- a. *Twenty-Four Hours.* Employees may take no more than twenty-four hours of SNLA leave in a twelve-month period. The twelve-month period is a rolling twelve months, beginning twelve months prior to the proposed commencement of the requested leave.
- b. *Notice.* Employees wishing to take SNLA leave must give at least 7 days' notice in the case of foreseeable events. If the event giving rise to the need for leave is not foreseeable, then the employee must give such notice as is practicable under the circumstances.

5. Certification

The Town reserves the right to request a certification of the need for SNLA leave.

6. Reduced Schedule Leave

Leave under this Policy may be taken intermittently on a reduced leave schedule.