



## LEAVE PLAN

### 606.8 – FAMILY MEDICAL LEAVE ACT (FMLA)

- 1. Policy Purpose:** To provide a policy regarding the use of FMLA leave.

**Policy Coverage:** This policy applies to all non-represented (non-exempt and exempt), full-time and part-time employees of the East Fork Fire Protection District.

**Adopted Date:** 03/19/2019

**Revised Date:** N/A

**Policy #:** 606.8

*\*\*The procedure established in this policy will be superseded and have no effect when covered by a similar or conflicting provision in a Collective Bargaining Agreement and/or Administrative Order. For detailed information, please refer to your Collective Bargaining Agreement or Administrative Order. \*\**

- 2. Policy:**

Public employers are covered under the Family and Medical Leave Act (FMLA) and will comply with the requirements of the FMLA and advise employees if they meet all the FMLA eligibility requirements. The District must provide employees Form WHD-1420 (reference: FMLA Form WHD1420-Employee Rights and Responsibilities Under the Family and Medical Leave Act) and are also required to post and keep posted this notice in a conspicuous place, even if no employees are eligible.

#### **A. Eligibility**

Employees who have been employed by the District for a total of twelve (12) months and worked for the District at least 1,250 hours during the preceding twelve (12)-month period are eligible for FMLA leave. The required one (1) year of employment does not have to be consecutive. There may be a break in service if it does not exceed seven (7) years. There is an exception to the seven (7)-year condition for USERRA-covered military and written agreements. All employees meeting the above qualifications qualify for FMLA, regardless of their seasonal, temporary, etc., status.

## **B. Compensation During Leave**

FMLA leave will be unpaid leave unless the employee has accrued paid leave and is otherwise eligible to use the leave. If an employee requests leave for the employee's own serious health condition or for the serious health condition of the employee's spouse, child, or parent, the employee must use all of his/her accrued paid vacation leave, sick leave, compensatory time leave, and personal time off as part of the FMLA leave. (See the applicable collective bargaining agreement for alternate provisions which may apply.) If leave is requested for any of the other reasons identified below, an employee must use all of his/her accrued paid vacation leave, compensatory time leave, and personal time off as part of the FMLA leave. The remainder of the leave period will then consist of unpaid FMLA leave. Employees must be made aware that they are required to use sick, vacation, compensatory time, and personal leave as appropriate, in the rights and responsibilities notice *Form WH381 (reference: FMLA Form WH-381- Notice of Eligibility and Rights and Responsibilities)*.

## **C. Intermittent or Reduced Schedule Leave**

When medically necessary (as distinguished from voluntary treatments and procedures) or for any qualifying exigency, leave may be taken on an intermittent or reduced schedule basis. Leave for bonding with a healthy newborn or placement of a healthy child for adoption or foster care is not considered medically necessary and, therefore, may not be taken on a reduced schedule or intermittent basis unless agreed to by the District Fire Chief, or Human Resources. Employees needing intermittent leave or reduced schedule leave must attempt to schedule their leave so as not to disrupt the District's operations. The District may require an employee on intermittent leave to temporarily transfer to an available alternative position for which the employee is qualified if the position has equivalent pay and benefits and better accommodates the employee's intermittent or reduced schedule leave. Intermittent leave and reduced schedule leave reduce the twelve (12)-week entitlement only by the actual time used. An employee who has been transferred under this section has reinstatement rights to his/her former position until the end of the twelve (12)-month FMLA leave year.

## **D. Duration of and Reasons for Leave**

Any eligible employee, as defined above, may be granted a total of twelve (12) weeks of unpaid FMLA leave (which can run concurrent with paid leave) during a 12-month period (see exception for *Military Caregiver Leave* as provided in section E. below). This period is measured backward from the date an employee uses any FMLA leave. A "week" is defined as a calendar week, regardless of the number of days the employee normally works. Twelve (12) calendar weeks does not entitle a part-time employee working three (3) days a week to sixty (60) leave days, but rather twelve (12) weeks. FMLA may be granted for the following reasons:

1. The birth of the employee's child and in order to care for the newborn child;
2. The placement of a child with the employee for adoption or foster care;

3. To care for the employee's spouse, child, or parent who has a serious health condition;
4. An employee's own serious health condition that prevents the employee from performing the functions of his/her job. Serious health conditions may include conditions resulting from job-related injuries and/or illnesses; or
5. Due to a qualifying exigency arising when an employee's spouse, son, daughter, or parent is a military member on covered active duty or has been notified of an impending call to covered active duty.

Exigency leave, under this Section 5, may be taken for:

1. Short-term notice deployment;
2. Military events and activities;
3. Child care and school activities;
4. Financial and legal arrangements;
5. Counseling;
6. Rest and recuperation;
7. Post-deployment activities;
8. Additional activities arising out of active duty that the District and employee agree upon.

Covered Active Duty means:

1. In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
2. In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty.

A serious health condition is an illness, injury, impairment, or physical or mental condition of incapacity or treatment that involves:

1. Inpatient care (overnight stay) in a hospital, hospice, or residential medical care facility.
2. Continuing treatment by (or under the supervision of) a licensed health care provider for a period of incapacity of more than three (3) consecutive full calendar

days, combined with at least two (2) visits to a licensed health care provider within thirty (30) days of the first day of incapacity or one (1) visit to a licensed health care provider requiring a regimen of continuing treatment; i.e., prescription medication.

Unpaid FMLA leave will run concurrently with paid vacation, sick, compensatory time, and/or personal leave, unless otherwise prohibited by any relevant collective bargaining agreement. Unpaid FMLA leave may also run concurrently with workers' compensation leave or other benefits.

The entitlement to FMLA leave for the birth or placement of a child for adoption or foster care will expire twelve (12) months from the date of the birth or placement. If both an employee and his/her spouse are employed by the District, their combined time off may not exceed twelve (12) weeks during any 12-month period for the birth, adoption, foster care, or care of a parent with a serious health condition. Each spouse is, however, eligible for the full twelve (12) weeks within a 12-month period to care for a son, daughter, or spouse with a serious health condition.

Employees may not take more than a combined total of twelve (12) weeks for all FMLA qualifying reasons listed above.

#### **E. Military Caregiver Leave**

An eligible employee, as defined by this policy, may be granted a total of twenty-six (26) weeks of unpaid FMLA leave (which can run concurrent with paid leave) during a 12-month period to provide caregiver leave for a seriously ill or injured covered service-member or veteran who is the employee's spouse, son, daughter, parent, or nearest blood relative. The covered service-member must be a member of the Armed Forces who suffered an injury or illness while in the line of duty, on active duty, that rendered the person medically unfit to perform his/her duties; or in the case of a veteran, the illness or injury manifests itself before or after s/he became a veteran. This period is measured forward from the date an employee takes FMLA leave to care for the covered service-member or veteran and ends twelve (12) months after that date.

Employees cannot take more than a combined total of twenty-six (26) weeks for military caregiver leave or because of other FMLA qualifying reasons as provided in section D above. A husband and wife both working for the District are limited to a combined total of twenty-six (26) weeks of FMLA military caregiver leave.

Covered Service-member means:

1. A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list, for a serious illness or injury; or
2. A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious illness or injury and who was a member of the Armed Forces (including

National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

#### **F. Notice of Leave**

An employee intending to take FMLA leave because of an expected birth or placement, a planned medical treatment or medical care, or qualifying exigency, must submit to Human Resources an application for such leave at least thirty (30) days before the leave is to begin. If a requested leave will begin in less than thirty (30) days, the employee must give notice to his/her immediate supervisor and Human Resources as soon as the necessity for the leave is known. Reasonable advance notice is required for all leaves, even if the event necessitating the leave is not foreseeable. If an employee gives less than thirty (30) days' notice, the District may require an explanation.

Within five (5) days (barring extenuating circumstances) of receiving notice that 1) an employee requests to use FMLA leave, or 2) an employee requests leave, and the District acquires knowledge that the leave may be FMLA qualifying, the District will complete Form WH-381 (reference: FMLA Form WH-381-Notice of Eligibility and Rights and Responsibilities). Completion of this form will designate if an employee is eligible for FMLA or if an employee is not eligible, the reason(s) why they are not eligible. The form will designate if the employee is required to obtain certification related to medical conditions and/or required family relationships. The District may require the use of FMLA leave for any absence which would otherwise qualify as FMLA leave, even if no formal application for such leave was made by the employee, provided notice is given to the employee.

#### **G. Certification of Leave**

Employees requesting FMLA leave for qualifying exigency are required to complete Form WH-384 (reference: FMLA Form WH-384-Certification of Qualifying Exigency for Military Family Leave) and provide a copy of the military member's active duty orders.

Employees requesting FMLA leave for military caregiver leave are required to complete Form WH-385 (reference: FMLA Form WH-385-Certification of Serious Injury or Illness of Covered Service member for Military Family Leave ) within fifteen (15) calendar days, barring extenuating circumstances.

A request for leave based on the serious health condition of the employee or the employee's spouse, child, or parent must be supported by completion of Form WH-380-E (reference: FMLA Form WH-380-E-Certification of Health Care Provider for Employee's Serious Health Condition) or Form WH-380-F (reference: FMLA Form WH-380-F-Certification of Health Care Provider for Family Member's Serious Health Condition) completed by the treating licensed health care provider. The certification must state the date on which the health condition commenced, the probable duration of the condition, and the medical facts regarding the condition.

If the employee is needed to care for a spouse, child, or parent, the certification must so state, along with an estimate of the amount of time the employee will need. If the employee has a serious health condition, the certification must state that the employee cannot perform all the functions of his/her job or any one of the essential functions of his/her job. Note: Attach the employee's current job description to Form 380-E (reference: FMLA Form WH-380-E-Certification of Health Care Provider for Employee's Serious Health Condition) when it is sent to the employee's licensed health care provider. The Certification of Health Care Provider form must be completed and returned by the employee within fifteen (15) calendar days, barring extenuating circumstances.

The District may contact the employee's licensed health care provider for the purpose of clarification or authentication after giving the employee an opportunity to clarify specific discrepancies. Only a Human Resources Department Representative may contact the health care provider.

If the District questions the validity of the certification, the District may require, at its expense, the employee obtain a second opinion from a licensed health care provider designated by the District. If the second opinion conflicts with the original opinion, the District may require, at its expense, that the employee obtain the opinion of a third licensed health care provider designated or approved jointly by the District and the employee. This third opinion will be considered final and binding on both parties.

In instances where diagnoses from medical providers appear to be indefinite or long-term, the District may require the employee to recertify that the original medical condition still exists. Such requests can be made no more frequently than once every six (6) months unless the circumstances reported in the original certification have changed significantly or the District receives information casting doubt upon the stated reason for the absence.

In situations in which the minimum duration of leave anticipated by the original certification is more than thirty (30) days, the District may request recertification if the employee requests an extension of leave, the circumstances described by the original certification have changed significantly, or the District receives information casting doubt upon the continuing validity of the certification.

The District may require the employee to provide new medical certification, not recertification, for his/her first FMLA-related absence in a new 12-month leave year.

Any employee on FMLA leave must notify the District periodically of his/her status and intention to return to work. The District has the authority to determine how often the employee must provide this notification.

Any genetic information obtained from certification or recertification must be maintained in a confidential manner by the District.

An employee may not accept other employment during an FMLA absence if the job conflicts with the reason the employee is on FMLA leave; i.e., an employee is on FMLA leave due to a back injury and accepts a job requiring heavy lifting.

## **H. Designation Notice**

Within five (5) business days (barring extenuating circumstances) of receipt of all required information, the District will decide if employee's request for leave is for an FMLA-qualifying reason. The District will complete Form WH-382 (reference: FMLA Form WH-382 Designation Notice) stating whether the requested leave is approved or not. If the District is unable to decide from the information provided, the District will use this form to:

1. Indicate the information presented is incomplete or insufficient and provide the employee seven (7) calendar days to provide complete information.
2. Provide notice to an employee if a second or third medical certification is required.

The District may also use this form to designate a fitness-for-duty certificate which will be required prior to returning to work.

## **I. Benefits Coverage During Leave**

During a period of FMLA leave, an employee will be retained on the District's health plan under the same conditions that would apply if the employee was not on FMLA leave. To continue health coverage, the employee must continue to make any contributions that s/he would otherwise be required to make. Failure of the employee to pay his/her share of the health insurance premium may result in loss of coverage.

If the employee fails to return to work after the expiration of the FMLA leave, the employee may be required to reimburse the District for payment of health insurance premiums during the leave, unless the reason the employee cannot return is due to circumstances beyond the employee's control. The definition of "beyond the employee's control" includes a very large variety of situations such as: the employee being subject to layoff, continuation, recurrence, or the onset of an FMLA-qualifying event; or the spouse's unexpected work site relocation of more than seventy-five (75) surface miles from the current worksite.

An employee is not entitled to the accrual of any seniority or employment benefits during any unpaid leave. An employee who takes FMLA leave will not lose any seniority or employment benefits that accrued before the date the leave began and will be entitled to any cost of living increase granted to all employees during the FMLA leave period.

## **J. Restoration to Employment**

Upon returning to work, an employee on FMLA leave will be restored to his/her most recent position or to a position with equivalent pay, benefits, and other terms and conditions of employment. The District cannot guarantee that an employee will be returned to his/her original job. The District will determine whether a position is an "equivalent position."

## **K. Return from Leave**

If an employee wishes to return to work prior to the expiration of a FMLA leave absence, s/he must notify Human Resources and their supervisor at least five (5) working days prior to the employee's planned return. Employees may be required to provide a fitness-for-duty certification prior to returning to work if the FMLA leave of absence was due to the employee's own serious health condition.

## **L. Failure to Return from Leave**

Failure of an employee to return to work upon the expiration of an FMLA leave of absence will subject the employee to disciplinary action, up to and including termination, unless the District has granted an extension. An employee who requests an extension of FMLA leave due to the continuation of a qualifying exigency, care for service-member, continuation, recurrence, or onset of his/her own serious health condition, or of the serious health condition of the employee's spouse, child, or parent, must submit a request for an extension, in writing, to the District. This written request should be made as soon as the employee realizes that s/he will not be able to return at the expiration of the leave period. Any additional time requested beyond the FMLA twelve (12) - or twenty-six (26)-week period will not be considered as FMLA. Rather, such time, if approved by the District Fire Chief, will be characterized as either paid or unpaid leave, thereby ending the District's return-to-duty obligations included in Section J. - Restoration of Employment. (See the applicable collective bargaining agreement for alternate provisions which may apply.) Nothing in this policy limits the District's obligations of reasonable accommodation under the Americans with Disabilities Act, as amended.

RESPONSIBILITY FOR REVIEW: The District Fire Chief, or his designee and/or the Executive Office Manager, or his/her designee will review this policy every 3 years or sooner as necessary.