



# TOWN OF ERVING

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Policy

## Family and Medical Leave Policy

Approved: \_\_\_\_\_

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Select Board Chair, Jacob A. Smith

Date: January 09, 2023

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### **.01 Issue Date / Effective Date**

This policy is issued and effective on January 09, 2023.

This policy supersedes the Family and Medical Leave Act Policy, previously issued on November 23, 2015.

### **.02 Introduction**

The Federal Family and Medical Leave Act of 1993 (“FMLA”) entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons, as explained below.

### **.03 Employee Eligibility**

To be eligible for FMLA benefits with the Town of Erving (the “Town”), an employee must:

- A. Work for the Town;
- B. Have worked for the Town for a total of at least twelve (12) months in the prior seven (7) years; and
- C. Have worked at least 1,250 hours over the previous twelve (12) months.

#### **.04 Leave Entitlement**

**Section 1.** The Town will grant an eligible employee up to a total of twelve (12) work weeks of unpaid leave during a rolling 12-month period<sup>1</sup> for one or more of the following reasons:

- A. For the birth of a child and to care for the newborn child;
- B. For the placement with the employee of a child for adoption or foster care;
- C. To care for an immediate family member (spouse, child, or parent) with a serious health condition;
- D. When the employee is unable to work because of their own serious health condition that prevents them from performing the functions of their job; or
- E. For a “qualifying exigency” (as defined in 29 CFR § 825.126) when the employee’s spouse, child, or parent who is a member of any branch of the military, including the National Guard or Reserves, has been deployed or called to active duty, in a foreign country.

Spouses employed by the Town are jointly entitled to a combined total of twelve (12) workweeks of family leave, except when the leave is needed to care for a child or spouse with a serious health condition; under such circumstances, such employees may each be eligible for up to twelve (12) weeks of family leave.

Leave for birth or placement for adoption or foster care must conclude within twelve (12) months of the birth or placement.

**Section 2.** The Town will also grant an eligible employee up to a total of twenty-six (26) weeks of unpaid FMLA leave for the following reasons:

- A. To care for a spouse, children, parent, or next of kin (i.e., nearest blood relative), who is a current member of the Armed Forces (including a member of the National Guard or Reserves) and who is undergoing medical treatment, recuperation or therapy, is an outpatient, or is on the temporary disability retired list, for a serious injury or illness incurred in the line of duty while on active duty in the Armed Forces, (or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty in the Armed Forces).
- B. To care for a spouse, child, parent, or next of kin (i.e., nearest blood relative), who is a veteran undergoing medical treatment, recuperation or therapy for a serious injury or illness incurred in the line of duty while on active duty in the Armed Forces (or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty) and manifested itself before or after the member became a veteran. The veteran must have been a member of the Armed Forces (which includes the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy.

Such a 26-week leave period shall only be available for a single 12-month period.<sup>2</sup> To the extent spouses work for the Town, the aggregate number of workweeks available to both spouses shall be limited to 26 weeks during the single 12-month period. In addition, any leave taken during that single 12-month period for one of the other qualifying reasons (as noted in this Policy) shall count against the 26 weeks available.

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<sup>1</sup> For the purposes of calculating the 12-month period referred to above, the Town will measure the 12-month period backward from the date of an employee’s request for FMLA leave. Each time an employee takes FMLA leave, the Town will determine the total amount of FMLA leave used by the employee during the preceding 12 months, and the remaining time available to the employee will be the balance of 12 weeks which has not been used.

<sup>2</sup> Calculation of the single 12-month period in this Section shall be based off the 12-month period immediately following the first day of such FMLA-qualifying leave. Such 26-week period shall not be based on the rolling measurement noted in Section 1.

(Only 12 of the 26 weeks total may be used for an FMLA-qualifying reason other than to care for a covered servicemember.)

**Section 3.** Under some circumstances, employees may take FMLA leave intermittently.

- A. When intermittent leave is needed to care for an immediate family member, the employee's own illness, or a covered servicemember, and is for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the Town's operation.
  
- B. The Town may temporarily transfer an employee taking intermittent or reduced schedule leave to an alternative job, with equivalent pay and benefits, that accommodates recurring periods of leave better than the employee's regular job when such leave is foreseeable based on planned medical treatment.

**Section 4.** The Town may require employees to use accrued paid leave<sup>3</sup>, such as sick or vacation leave, or compensatory time, to cover some or all of the FMLA leave. When paid leave is used, the employee must follow the Town's paid leave policies and procedures with respect to use of such leave.

Any leave taken by an eligible employee for any of the reasons covered by this policy will be considered FMLA leave and will be designated as such even if the employee does not specifically identify the time off as FMLA leave.

#### **.05 Maintenance of Health Benefits**

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The Town will maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. The employee will make arrangements with the Town to pay their share of health insurance premiums while on leave. The Town may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

#### **.06 Job Restoration**

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Upon return from FMLA leave, an employee will be restored to their original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.

In addition, an employee's use of FMLA leave will not result in the loss of an employment benefit that the employee earned or was entitled to before using FMLA leave.

#### **.07 Notice, Certification and Status Reports**

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Employees seeking to use FMLA leave are required, as appropriate, to provide to the Town:

- A. NOTICE: Thirty (30) days advanced notice of the need to take FMLA leave when the need is foreseeable, otherwise as soon as is practicable.
  
- B. MEDICAL CERTIFICATION:
  - a. Medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member, or a covered servicemember with a serious injury or illness;

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<sup>3</sup> The Town's policy on use of paid leave is subject to, and will be administered in accordance with, the Massachusetts Parental Leave statute.

An employee requesting FMLA Leave does not have to share a medical diagnosis, but must provide enough information to the Town so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing the Town that the employee is or will be unable to perform their job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the Town if the need for leave is for a reason for which FMLA leave was previously taken or certified.

- b. Second or third medical opinions and periodic recertifications (at the Town's expense) if requested by the Town; and
  - c. Medical certification and/or fitness for duty certification supporting the employee's ability to return to work as requested by the Town, which the Town may request include a statement from a health care provider that the employee can perform all of the essential functions of the job.
- C. QUALIFYING EXIGENCY: Certification supporting the need for leave due to a qualifying exigency.
- D. STATUS REPORTS: Periodic reports during FMLA leave regarding the employee's status and intent to return to work as requested by the Town.

#### **.08 Non-Interference**

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The Town will not interfere with an employee's FMLA rights or retaliate against an employee for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

#### **.09 Complaints**

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An employee who believes that their rights under the FMLA have been violated is encouraged to notify the Town Administrator. In addition, such an employee may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may file a private civil action.

#### **.10 Other Provisions**

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This Policy shall at all times be interpreted in a manner consistent with the Department of Labor's Regulations pertaining to the Family and Medical Leave Act of 1993. The FMLA does not affect any other federal or state law that prohibits discrimination, nor supersede any state or local law that provides greater family or medical leave protection. Nor does it affect the Town's obligation to provide greater leave rights under a Collective Bargaining Agreement or employment benefit plan, where applicable.

#### **.11 Departmental Procedures**

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The Town's Department Heads, with the approval of the Town Administrator, may establish their own procedures to implement this policy, consistent with the policy.