

TOWN OF PRESCOTT VALLEY
POLICIES AND PROCEDURES

Subject:		File Under Section:	
FAMILY AND MEDICAL LEAVE ACT		PERSONNEL	
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Supersedes:		Approved By:	
July 1, 2009 Res. No. 1646, 6/11/2009		Larry Tarkowski Town Manager	
		Date: _____/S	

1.0 POLICY

- 1.1 The Town of Prescott Valley recognizes the need for employees to balance their work and family life by taking reasonable leave for a serious health condition, for birth or adoption of a child, and for the care of a child, spouse, or parent who has a serious health condition. The Town also recognizes the need for employees to attend to matters when a spouse, son, daughter, or parent is called to active duty or to care for an injured servicemember. The Town also encourages supervisors to work with employees to creatively solve personal and operational conflicts in designing leaves and alternate work schedules.

- 1.2 It is the policy of the Town to grant up to twelve (12) weeks of unpaid family and medical leave or twenty-six (26) weeks of unpaid injured servicemember leave during any twelve-month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA). The Town defines twelve-month period as a “rolling twelve-month period” measured backward from the date an employee uses any FMLA leave. It should be noted that the twelve-week and twenty-six week leave allowance is not “per event.” Multiple leave requests in any benefit year may lead to situations where the twelve-week and twenty-six week leave allowance would be met.

- 1.3 In order to qualify to take family and medical leave under this policy the employee must have worked for the Town for at least twelve (12) months or fifty-two (52) weeks. The twelve months or fifty-two (52) weeks need not be consecutive. The employee must also have worked at least 1,250 hours during the twelve-month period immediately prior to when the leave would begin.

- 1.4 FMLA leave begins with the first day of the leave, regardless of whether it is paid or unpaid.

- 1.5 Employees are required to use accrued general leave for any leave requested under the Family and Medical Leave Act before any leave without pay is taken. Compensatory time off is not a form of accrued paid leave that an employee is required to substitute for unpaid FMLA leave; however, an employee may use his/her balance of compensatory time for an FMLA reason.

2.0 PURPOSE

- 2.1 To identify and provide leave benefits in compliance with the Family and Medical Leave Act (FMLA) and to coordinate this with related provisions of existing Town policies.

3.0 APPLICABILITY

- 3.1 All employees who have worked for the Town for a total of at least twelve (12) months and for at least 1,250 hours during the twelve-month month period preceding the start of the leave.

4.0 REFERENCE

- 4.1 Federal Regulations Part 825, The Family and Medical Leave Act of 1993.
4.2 National Defense Authorization Act of 2007.
4.3 Fiscal Year 2010 National Defense Authorization Act

5.0 POLICY PARAMETERS

- 5.1 In order to qualify as Family and Medical Leave under this policy, the employee must be taking the leave as a result of one of the reasons listed below:
- a) to care for a son or daughter after birth (“birth leave”)
 - b) to care for the employee’s child after placement for adoption or foster care (“placement leave”)
 - c) to care for the employee’s spouse, child, or parent with a “serious health condition” (“family health leave”)
 - d) for a “serious health condition” which makes the employee unable to perform the functions of the employee’s job (“employee health leave”)
 - e) for “qualifying exigencies” due to the fact that an employee’s spouse, son, daughter, or parent is serving in the National Guard, Reserves, or Armed Forces and is on military duty or has been called to active duty (“exigency leave”); or
 - f) to care for a spouse, child, parent, or “next of kin” servicemember who has a serious injury or illness incurred in the line of duty while on active military duty. This also includes veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment (“servicemember leave”).

An employee’s spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA. The term “parent” does not include a parent “in-law.” The terms son or daughter do not include individuals age 18 or over unless they are “incapable of self-care” because of a mental or physical

disability that limits one or more of the “major life activities” as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the Americans With Disabilities Act (ADA). An employee’s next living blood relative is the next of kin for purposes of servicemember leave for FMLA.

- 5.2 The Town may require an employee requesting leave for a serious health condition to provide a treating physician’s certification of that condition. Medical certification will be provided on the Town Medical Certification form. Such certification will be due fifteen (15) days from the request or the employee must provide a reasonable explanation for the delay. Failure to provide certification may result in denial of continuation of leave.
 - 5.2.1 The Town may request a second opinion for a medical leave. The Town will pay for the employee to obtain certification from a second treating physician which the Town will select. If necessary to resolve a conflict between the original certification and the second opinion, the Town will request the opinion of a third treating physician. The Town and the employee will jointly select the third treating physician, and the Town will pay for the opinion. This third opinion will be considered final.
 - 5.2.2 The Town requires an employee to obtain subsequent re-certifications to support continued leave. Re-certifications will not be required more often than every six (6) months unless an extension to a leave is requested, circumstances have changed since the original certification, or the Town has information raising a question regarding the validity of the original certification.
 - 5.2.3 Employees who are absent without indicating a specific medical reason must, within two days of returning to work, subsequently indicate the absence was for a FMLA purpose. Otherwise the employee cannot claim FMLA protection. (29 CFR §825.208(e)(1)). Employees do not have to mention the FMLA specifically, but must state the reason for the leave so that a determination may be made that it qualified for FMLA protection.
- 5.3 Leave under this policy is not intended for short-term illness or conditions for which treatment and recovery are very brief. Under such circumstances, the employee should utilize general leave as provided for in the Town Personnel Policies and Procedures.
- 5.4 In the case of birth leave, placement leave, or for eligible family health leave where both husband and wife are employed by the Town, a combined total of twelve weeks per “rolling twelve-month period” is permitted. Both employees are not entitled to twelve weeks apiece for these categories of leave in any given twelve-month period. Instead, the employees may divide the time (twelve weeks between the two) in any way they choose, or one employee can use the entire allowance. However, each employee would have the difference between what time that employee took for birth leave, placement leave, or for eligible family health leave and the twelve-week allowance for other FMLA qualifying reasons for that “rolling twelve-month period”.

6.0 INTERMITTENT LEAVE

- 6.1 An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced work schedule to care for an immediate family member with a serious health condition or because of a serious health condition of the employee when medically necessary, or to care for a servicemember who was injured in the line of duty while on active military duty.
- 6.2 For the birth, adoption or foster care of a child, the employee may take leave intermittently or work a reduced schedule only with the Town Manager's approval. Leave for birth, adoption, or foster care must be taken within one year of the birth or placement of the child.
- 6.3 In cases when leave is authorized on an intermittent or reduced schedule basis, the department head, with Town Manager approval, may temporarily transfer the employee to a position that better accommodates the leave needed. Such position must carry equivalent pay and benefits.

7.0 STATUS, PAY, AND BENEFITS

- 7.1 An employee who takes leave under this policy will be able to return to the same job or a job with equivalent status, pay, benefits, and other employment terms.
- 7.2 Employees taking leave under this policy must use all available accrued general leave before taking the remainder as unpaid leave. Such paid leave will be considered FMLA leave and counted against the twelve (12) or twenty-six (26) eligible weeks.
- 7.3 An employee who is on FMLA leave due to any of the reasons listed in section 5.1 or made eligible by law must use all available general leave prior to being eligible for unpaid leave.
- 7.4 Eligible exempt employees utilizing leave for the reasons outlined in this FMLA policy who exhaust all paid leave will typically not have deductions in salaries made for absences less than one day. On the other hand, deductions will be made from exempt salaries for absences of a day or longer for employees who no longer have paid leave available. The Town reserves the right, within FMLA guidelines, to reduce the salary of an exempt employee who arranges an on-going reduced work schedule and incurs absences of less than one day with no paid leave available without affecting the exempt status of the employee (FMLA 825.206).
- 7.5 While an employee is on leave, the Town will continue the employee's health benefits, as well as life and disability insurance provided by policy, during the leave period at the same level and under the same conditions as if the employee had continued to work. The employee continues to pay any portion of the cost they had been paying for additional coverage. If this was done through payroll deduction, this will continue while the employee is on paid leave. While on unpaid leave, employees must continue to make this payment either in person or by mail. Coverage may be terminated for non-payment by the employee if the payment is thirty (30) days past due.

- 7.6 Employees on paid leave will continue to accrue general leave in accordance with the general leave policy.
- 7.7 Retirement system contributions shall not be made during unpaid leave. FMLA unpaid leave shall not be treated as a break in service for purposes of vesting and participation.
- 7.8 Service credit accruals and seniority continue to be governed by applicable rules.

8.0 PROCEDURES FOR REQUESTING LEAVE

- 8.1 Except in cases of medical emergency, all employees requesting leave under this policy must submit the Family and Medical Leave of Absence Request Form to their department or division head. Unless the leave is unforeseeable, employees must give thirty (30) days notice. If it is not possible to give thirty (30) days notice, the employee must give as much notice as is practical. If an employee fails to provide thirty (30) days notice for foreseeable leave with no reasonable justification for the delay, the leave request may be denied until at least thirty (30) days from the date the Town receives the notice.
 - 8.1.1 A department head/supervisor may designate an employee's time off as FMLA by marking the appropriate box on the employees leave request slip within two (2) days of learning the reason for the time off. The notice may be oral, but if so it must be confirmed in writing by the next payday. If the deadline is missed a department head/supervisor may still designate future time off as counting against FMLA leave, but leave taken earlier will not be counted.
- 8.2 The human resources director will determine whether the leave period is FMLA qualifying and will provide individualized written notification to the employee on the Family and Medical Leave of Absence Designation Form explaining specific expectations, obligations, rights, and limitations applying to the employee's leave. This determination will be made in response to an employee request for leave as outlined above. If the leave qualifies as FMLA leave, the human resources manager must designate the entire leave period as FMLA leave and notify the employee accordingly.

7.0 RETURNING TO WORK

- 9.1 If the employee wishes to return to work at the expiration of the employee's leave, the employee is entitled to return to the same position or to an equivalent position with equal pay, benefits and other terms and conditions of employment. In the case of employee illness, the Town may require a fitness for duty report from the employee's treating physician prior to the employee's returning to work. The employee's treating physician shall complete the Town's Fitness For Duty – Treating Physician Certification form and forward this confidentially to the human resources director.
- 9.2 Failure of an employee to return to work on the established date, beyond the twelve (12) weeks allowed in this policy, may result in termination.

8.0 OTHER CONSIDERATIONS

- 10.1 Personal and family situations may vary regarding the use of the above leave. The human resources director should be contacted to assist in clarifying the application of this policy and related laws and policies.
- 10.2 Employees may not engage in outside employment during a period of leave covered by this policy.