



ARTICLE X FAMILY AND MEDICAL LEAVE ACT POLICY (FMLA)

I. POLICY:

The Town will grant up to 12 weeks of family and medical leave per twelve months to eligible employees in accordance with the Family and Medical Leave Act of 1993 (FMLA). The leave may be paid (coordinated with the Town's Vacation and Sick Leave policies), unpaid, or a combination of paid and unpaid. A paid leave will be approved on a case-by-case basis by the Town Manager. Earned compensatory time may also be used during FMLA leave. Additional time away from the job beyond the 12-week period may be approved on a case-by-case basis by the Town Manager.

To qualify for FMLA coverage, the employee must have worked for the employer 12 months or 52 weeks; these do not have to be consecutive. However, the employee must have worked 1,250 hours during the twelve-month period immediately before the date when the FMLA time begins.

Family and medical leave can be used for the following reasons:

- 1) The birth of a child and in order to care for that child.
- 2) The placement of a child for adoption or foster care.
- 1) To care for a spouse, child, or parent with a serious health condition.
- 2) The serious health condition of the employee; or
- 3) Military exigency.

A serious health condition is defined as a condition which requires inpatient care at a hospital, hospice, or residential medical care facility, or a condition which requires continuing care by a licensed health care provider. This policy covers illness of a serious and long-term nature resulting in recurring intermittent or lengthy absences. Generally, a chronic or long-term health condition which results in a period of incapacity for more than three days would be considered a serious health condition.

If a husband and wife both work for the Town and each wish to take leave for the birth of a child, adoption, or placement of a child in foster care, or to care for a parent (not parent in-law) with a serious health condition, the husband and wife together may only take a total of 12 weeks leave under FMLA.

An employee taking leave for the birth of a child may use paid sick leave for the period of actual disability, based on medical certification. The employee shall then use all paid vacation, accrued compensatory time, and leave without pay for the remainder of the 12-week period.

Employee Responsibility

- (1) The employee shall apply in writing to his/her department head, unless an emergency situation arises, for leave requested under this policy. The department head shall forward the request to the Town Manager for approval. The guidelines for employee responsibility are as follows:

Planned Medical Treatment - When there is a necessity for leave to care for the employee's child, spouse, or parent or because the employee has a serious health condition, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt operations, subject to the approval of the employee's health care provider or the health care provider of the employee's child, spouse, or parent. The employee must also give 30 days' written notice of the intention to take leave, subject to the actual date of the treatment. If the reasons for the employee's planned medical treatment do not allow 30 days written notice of the intention to take FMLA leave, the employee should provide such notice as soon as possible. Failure to provide proper notice and/or proper certification and documentation may result in denial or delay of the leave request.

- (2) Paid leave will be taken by exhausting all sick leave, then vacation leave or vacation leave with short-term disability (STD). Use of vacation leave with STD will be approved on a case-by-case basis.
- (3) After the period of leave, pursuant to this policy, if the employee does not intend to return to work, the Town should be notified immediately. Failure to report at the expiration of the leave, unless an extension has been requested and approved, shall be considered a resignation.

“Military Exigency” is a qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a military service member (reserve or National Guard) under a call or order to federal active duty in support of a contingency operation. Qualifying events are:

- 1) Deployment of service member with seven or fewer days’ notice.
- 2) Military ceremonies and events such as family-assistance or informational programs related to the family member’s active duty or call to active duty.

- 3) Urgent, immediate childcare or arranging for alternative childcare for the children of service members.
- 4) Attending school or daycare meetings relating to the child of the service member.
- 5) Making financial or legal arrangements related to a family member's active-duty status or call to active duty.
- 4) Taking up to five days leave to spend with a covered military member who is on short-term temporary rest and recuperation leave during deployment.
- 5) Attending counseling provided by someone other than a health provider for oneself, the covered military member, or the child of the military member, the need for which arises from the active-duty service or call to active-duty status or the covered military member; or
- 6) Post-deployment activities for a period of ninety days after the termination of the service member's active-duty status.

Military Caregiver Leave: An employee whose spouse, son, daughter, parent or next of kin is a current service member who is undergoing treatment, therapy, recuperation or outpatient treatment or has temporary disability retirement for injury or illness sustained in the line of duty, is eligible for 26 weeks of FMLA leave in a single 12-month period. During a single 12-month period, the employee is eligible for a total of 26 weeks of all types of FMLA Leave combined.

The request for the use of Military Caregiver Leave must be made in writing by the employee and approved by the Department Head or Town Manager.

An employee who takes leave under this policy will return to the same job or a job with equivalent status, pay, benefits, and other employment terms. The position will be the same or one which entails substantially equivalent skill, effort, responsibility, and authority.

Family Medical Leave – Certification

In order to qualify for leave under this law, the Town requires medical certification. This statement from the employee's or the family member's physician should include the date when the condition began, its expected duration, diagnosis, and brief statement of treatment. For the employee's own health condition, it should state that the employee is unable to perform the essential functions of his/her position. For a seriously ill family member, the certification must include a statement that the patient requires assistance and the employee's presence is necessary.

This certification should be furnished at least 30 days prior to the needed leave unless the employee's or family member's condition is a sudden one. The certification should be furnished as soon as possible (no longer than 15 days from the date of the employee's request). The certification and request must be made to the Department Head and filed with the Human Resources Manager.

The employee is expected to return to work at the end of the time frame stated in the medical certification unless he/she has requested additional time in writing under the Town's Leave Without Pay policy.

Family Medical Leave: Retention and Continuation of Benefits

When an employee is on leave under FMLA, the Town will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. If an employee chooses not to return to work for reasons other than a continued serious health condition, the Town will require the reimbursement of the amount paid for the employee's health insurance premium during the FMLA leave period.

Other insurance and payroll deductions are the responsibility of the employee, and the employee must make those payments for continued coverage of that benefit by the first of each month.

After using all paid leave for which the employee qualifies, the employee on FMLA may use Leave Without Pay for the remainder of the FMLA 12/26-week entitlement. An employee ceases to earn holiday or leave credits on the date Leave Without Pay begins.

Leave Without Pay

A full-time employee may be granted a leave of absence without pay for a period of up to twelve months by the Town Manager. The leave may be used for reasons of personal disability, sickness or disability of immediate family members, continuation of education, special work that will permit the Town to benefit by the experience gained or the work performed, or for other reasons deemed justifiable by the Town Manager.

The employee shall apply in writing to the Town Manager for Leave Without Pay. The employee is obligated to return to duty within or at the end of the time determined appropriate by the Town Manager. Upon returning to duty after being on leave without pay, the employee shall be entitled to return to the same position held at the time Leave Without Pay was granted or to one of like classification, seniority, and pay.

If the employee decides not to return to work, the Department Head shall be notified immediately. Failure to report at the expiration of a leave of absence, unless an extension has been requested and granted, shall be considered a resignation.

An employee shall retain all unused vacation and sick leave while on Leave Without Pay. An employee ceases to earn holiday or leave credits on the date Leave Without Pay begins. The employee may continue to be eligible for benefits under the Town's group insurance plans at his or her own expense, subject to any regulation adopted by the Town and the regulations of the insurance carrier. If the Leave Without Pay is for a circumstance that coincides with FMLA or USERRA then the provisions of those policies will apply.

II. WORKERS' COMPENSATION LEAVE:

An employee absent from duty because of sickness or disability covered by the North Carolina Workers' Compensation Act may elect to use accrued sick leave, vacation, or compensatory time only during the first waiting period of seven days. The employee will not be required to reimburse the Town for this paid leave in the event the absence extends beyond twenty-one days and the first seven days is paid by Worker's Compensation. If the employee elects to use accrued sick leave, vacation, or compensatory time for the initial waiting period, he/she will be placed on Leave Without Pay at the end of the seven days; full-time employees who do not elect to use paid leave for the initial waiting period will be placed on Leave Without Pay effective with the date of injury. Once the waiting period is over, Workers' Compensation covers approximately two thirds of regular pay.

Any Workers' Compensation disability that qualifies under the requirements of FMLA shall run concurrently with FMLA. An employee on Workers' Compensation Leave Without Pay will be permitted to continue to be eligible for benefits under the Town's group insurance plans during the period of Workers' Compensation leave that is concurrent with FMLA.

Other insurance and payroll deductions are the responsibility of the employee, and the employee must make those payments for continued coverage of that benefit. Any amounts owed are due and payable by the first of the month.

An employee shall retain all unused vacation and sick leave while on Workers' Compensation Leave Without Pay. An employee ceases to earn holiday or leave credits on the date Workers' Compensation Leave without Pay begins. After the period of FMLA eligibility ends, the employee may continue to be eligible for benefits under the Town's group insurance plans at his or her own expense subject to the regulations of the insurance carrier.

III. MILITARY AND OTHER USERRA LEAVE:

The Town will fully comply with the requirements of the 1994 Uniformed Services Employment and Re-Employment Rights Act (USERRA) and related federal regulations.

For the purposes of USERRA covered employees are the following:

- 1) Armed Forces Active and Reserve (Army, Navy, Marine Corps, Air Force, Coast Guard)

- 2) Army National Guard and Air National Guard
- 3) FEMA's Disaster Assistance Teams
- 4) Commissioned Corps of the Public Health Service
- 5) Military Service Academies
- 6) Reserve Officer's Training Corps (ROTC)

Employees taking leave under USERRA shall be eligible to take accumulated vacation leave, accrued compensatory time, or be placed in a Leave Without Pay status, and the provisions of that leave shall apply. While taking USERRA leave, the employee's unused leave balances will be retained and any seniority-based benefits such as leave accrual rates will continue to accrue.

Employees performing USERRA duty of more than 30 days may elect COBRA coverage to continue the Town's health benefits for up to 24 months but will be responsible for paying the insurance premiums up to 102% of the premium costs. Employees whose USERRA duty is less than 31 days will have their health insurance coverage paid as if they were at work with the Town.

Military Training. In addition to complying with the requirements of USERRA, the Town provides additional benefits for military training. Full-time employees who are members of an Armed Forces Reserve organization or National Guard shall be granted fifteen calendar days per year for Military Leave With Pay. If the compensation received while on military leave is less than the salary that would have been earned during this same period as a Town employee, the employee shall receive partial compensation equal to the difference. The effect will be to maintain the employee's salary at the normal level during this period.

If such duty is required beyond the fifteen calendar days, the employee shall be eligible to take accumulated vacation leave or be placed in a Leave Without Pay status, and the provisions of that leave shall apply. While on military leave, seniority-based benefits such as leave accrual rates shall continue to accrue as if the employee was actively at work. Employees on extended military leave will remain COBRA eligible for health benefits on a voluntary basis, at the employee's expense for a period of 24 months.

Part-time and temporary employees will be granted time off without pay to meet their military reserve or National Guard training obligations.

Reinstatement Following Military and other USERRA Service Leave

An employee who volunteers or is called to active duty with the United States military forces, and who returns to work in less than five years will be returned to the same or like position he or she occupied prior to the active-duty enlistment with full seniority, status, leave accrual rates and

pay as if there had been no break in employment. A military discharge form "DD214" with an honorable discharge must be submitted with the notification of intent to return to work.

Time limits for employees to reapply for return to work after release from military service are:

- 1) Less than 31 days absence – employee must report to employer by the next business day.
- 2) 31 days-180 days absence – notification to the supervisor must be submitted within 14 days: or
- 3) More than 180 days absence – notification to the supervisor must be submitted within 90 days.

All reporting deadlines are extended for two years if the employee is injured during USERRA service.

Policy adopted by Selma Town Council

Effective Date: July 10, 2018

As of August 10, 2021, this policy replaces and supersedes any previous policies, or unwritten policies or practices covering the same subject.