

## **APPENDIX C**

### **Family and Medical Leave Act**

#### **PURPOSE**

This Appendix supplements Section 5.2 of the Town of Payson Personnel Policy Manual. This Appendix and Section 5.2 shall be interpreted and applied in compliance with the Family Medical Leave Act (FMLA) and the regulations adopted pursuant thereto. The stated intent of Congress is for employer and employee to work together in a spirit of mutual cooperation and respect to ensure the benefits of the FMLA for employees in a manner that accommodates the legitimate interests of the employer.

#### **CALCULATION OF 12-MONTH PERIOD**

The Town of Payson uses a rolling 12-month period measured backwards from the date an employee uses any FLMA leave to determine an employee's leave entitlement. This will be determined each time leave is requested by looking back over the immediately preceding 12-month period.

#### **QUALIFYING CIRCUMSTANCES/PAID LEAVE SUBSTITUTION**

Under the guidelines of the FMLA, the employer is required to grant leave to eligible employees provided the qualifying circumstances are present and documented. Each of these circumstances or events has certain qualifying definitions, conditions, and guidelines which must be considered in order to determine eligibility under the FMLA.

FMLA leave shall be granted for:

- 1) The birth and care of a newborn child, the placement of a child for adoption or foster care requiring State action.

The right to take leave under FMLA applies equally to male and female employees; a father or a mother can take family leave for the birth and care of a newborn child or the placement of a child for adoption or foster care. Absent unusual circumstances the birth or placement of the child will initiate the start of the 12-week leave period. Entitlement to take leave for the birth or placement of a child expires at the end of the 12-month period following the birth or placement.

The period of childbirth and recovery is considered as a period of temporary disability for the birth mother and is specifically described in the legislative history of the FMLA as "the employee's serious health condition" for which medical leave may be used. Medical leave can be used for the temporary period of disability in which the birth mother is unable to perform the duties of the job as certified by a physician consistent with the policy governing any other temporary disability; under the FMLA prenatal care is also considered as "a serious health condition" for which medical leave can be used.

- 2) To care for the employee's spouse, child or parent with a serious health condition.
- 3) Because of a serious health condition that makes the employee unable to perform the functions of his/her position.
- 4) To care for a member of the armed forces, including members of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.
- 5) To handle the urgent needs related to a family member's current active military duty or a call to active military duty (once this provision of the FMLA is implemented)

#### **KEY DEFINITIONS**

In order to determine eligibility under the FMLA, it is important to understand the key definitions of qualifying relationships and circumstances.

Spouse is defined as husband or wife as defined under state law; unmarried domestic partners do not qualify for family leave to care for their partners.

Child is defined as a biological, adopted or foster child, stepchild, legal ward or a child of a person having day-to-day care for the child under 18 years of age. Child may also include a son or a daughter who is 18 or more years of age if he/she is incapable of self-care because of a physical or mental disability.

Parent includes the biological parent of an employee, or an individual who stood in the place of a parent when the employee was a child, regardless of the existence of a legal relationship. Parents-in-law are not included in this term.

Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:

- 1) Any period of incapacity or treatment in connection with or subsequent to inpatient care in a hospital, hospice or residential medical facility.
- 2) Any period of incapacity requiring absence from work, school or other regular daily activities of more than three calendar days that also involves continuing treatment by or under the supervision of a health care provider.
- 3) Continuing treatment by or under the supervision of a health care provider for a chronic or long-term health condition that is incurable or so serious that if not treated would likely result in a period of incapacity of more than three calendar days, or for prenatal care (see section above).

Continued treatment by a health care provider is defined as the employee or family member being treated two or more times for the injury or illness by a health care provider; the employee or family member being treated on at least one occasion which results in a regimen of continuing treatment under the supervision of a provider (medication, therapy) to resolve the condition; or the employee or family member being under the continuing supervision of, but not necessarily being actively treated by, a health care provider due to a serious long term or chronic condition or disability which cannot be cured (such as Alzheimer's, terminal disease) but which may not require active treatment. Treatments for allergies, stress and substance abuse are covered by this clause if all the conditions of this regulation are met; however, the inclusion of substance abuse does not prevent an employer from taking action against an employee who is unable to perform the functions of the job due to substance abuse.

It is not necessary for the employee to specifically request leave as FMLA qualifying; if the qualifying conditions are present the Town of Payson can designate the leave as FMLA leave and must so notify the employee immediately.

#### **MEDICAL CERTIFICATION/ELIGIBILITY REQUIREMENTS**

An employee is considered to be "unable to perform the essential functions of the position of the employee", and therefore entitled to take FMLA leave, where the health care provider finds that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA) and its regulations. The employer has the option to provide a statement of the essential functions of the job for the provider to review in the certification process.

An employee is considered to be "needed to care for" a family member if the health care provider finds that the employee is needed to provide physical and psychological care when the family member is unable to care for his or her own basic medical, hygienic, nutritional or safety needs, or is unable to transport himself/herself to the doctor.

In any case the health care provider's statement (see attached) should include the diagnosis of the serious health condition and the date it commenced, the probable duration of the condition, a brief statement outlining the course of care that will be followed (number of visits, frequency/duration of treatment), whether hospitalization will be required and a statement as to whether the employee is unable to work or unable to perform the essential functions of the job or how/why the employee is needed to provide care to the family member.

The Town of Payson may require the employee to obtain a second opinion or third opinion or periodic recertification at the expense of the Town of Payson; the Town of Payson may designate the provider furnishing the second or third opinion or recertification but it may not be a provider regularly utilized by the Town of Payson.

Employees may also be required to report periodically to the Town of Payson on their status and their intention to return to work.

### **INTERMITTENT/REDUCED SCHEDULE LEAVE**

FMLA leave may be taken "intermittently" or on a reduced leave schedule when medically necessary to care for a family member or for the employee's own serious health condition and when approved by the Town of Payson.

Intermittent leave may include periods of time from an hour to several weeks, such as might be necessary for medical treatment. Reduced schedule leave is leave that would reduce the employee's usual number of working days per week or hours per workday. Intermittent or reduced schedule leave is subtracted from the total of 12 weeks of unpaid leave to which the employee is entitled under the FMLA by the actual amount of leave the employee has taken.

The employee is required to arrange for intermittent leave for scheduled medical treatment in advance with as much consideration for the business of the employer as possible. In addition, if an employee requests intermittent leave or reduced schedule leave, the Town of Payson may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than the employee's regular position. The alternative position must have equivalent pay and benefits but need not have equivalent duties so that the Town of Payson may transfer the employee to a lower position at the employee's same rate of pay.

### **UNLAWFUL DISCRIMINATION**

It is unlawful for any individual to discriminate against, interfere with, or deny the exercise of or the attempt to exercise any right under the FMLA.