

Date Approved: August 26, 2002 (Resolution #2002-37)

**POLICY TITLE:** FMLA/WFMLA Policy

**AUTHORIZATION:** Village Board Resolution #2002-37

**POLICY STATEMENT:**

**WHEREAS**, Resolution 90-11 adopted a written Personnel Policy (referred to "Policy") for Village Employees covering Sections 1-15; and

**WHEREAS**, on December 17, 1997, the Village Board of the Village of Howard, Brown County, Wisconsin (the "Village") amended its personnel policy for Village of Howard employees; and

**WHEREAS**, the Village of Howard desires to enact a Family Medical Leave Policy under the Federal Family Medical Leave Act of 1993 (FMLA) and the Wisconsin Family Medical Leave Act;

**NOW, THEREFORE, BE IT RESOLVED** by the Village Board of the Village of Howard, Brown County, Wisconsin that the following policy be added to the Personnel Policy as section 17:

**17. FMLA /WFMLA Policy**

INTRODUCTION

In accordance with federal and state law, the Village of Howard ("Village") will provide family and medical leave to employees. The Village's Family and Medical Leave Act Policy is intended to conform to and comply with, but not exceed, the requirements of the Federal Family and Medical Leave Act of 1993 ("FMLA") and the Wisconsin Family and Medical Leave Act ("WFMLA"). To the extent that this Policy is ambiguous or conflicts with the FMLA or the WFMLA, the FMLA and the WFMLA will govern.

Family and medical leave taken under this Policy may be covered by federal law, state law, or both. When leave taken by an employee under this Policy is governed by both federal and state law, the more generous provision will control in the event of a conflict. However, when leaves are governed by state or federal law, but not both, the applicable law will control under this Policy. In this regard, you should note that certain leaves may be covered by both state and federal law for only a portion of the leave. To the extent

permitted by law, leave under the FMLA, leave under the WFMLA and leave granted under the Village's other policies will run concurrently (at the same time).

## **1. ELIGIBILITY REQUIREMENTS**

To be eligible for leave under the FMLA, you must have been employed by the Village for at least twelve (12) months and must have worked at least 1,250 hours during the twelve-month period immediately preceding the commencement of the requested leave.

To be eligible for leave under the WFMLA, you must have been employed for more than 52 consecutive weeks and have worked or been paid for at least 1,000 hours in the preceding 52 weeks. The kind and amount of leave available to you under this Policy, as well as your rights during leave, depend upon whether you satisfy the above requirements.

## **2. QUALIFYING REASONS FOR LEAVE**

The Village provides family and medical leave for you under the following circumstances:

- A. For the birth of your child and to care for a newborn child;
- B. For placement with you of a child for adoption or foster care;
- C. To care for your spouse, child or parent with a "serious health condition;"

The term "child" generally includes a legal ward or a biological, adopted foster or stepchild. For leaves governed exclusively by the FMLA, the term also includes a "child" for whom you have assumed the day-to-day obligations of a parent and who is either under 18 years of age or unable to care for himself or herself due to a physical or mental incapacity or serious health condition.

"Parent" includes a parent-in-law only if you are requesting leave under the WFMLA.

- D. Because of a serious health condition that makes you unable to perform the essential functions of your position.

See the Administrator to determine whether your request for leave qualifies under one of the above categories.

### **3. AMOUNT OF LEAVE AVAILABLE**

Under the FMLA, if you satisfy the eligibility requirements set forth in Section 1, above, you are entitled to a total of twelve (12) work weeks of leave in a calendar year for any of the reasons stated in Section 2, above.

A husband and wife who are employed by the Village will be limited to a combined total of twelve work weeks of FMLA leave during the calendar year if the leave is taken:

1. For birth of their child;
2. For placement with them of a child for adoption or foster care;
3. To care for a child during the twelve months following birth or placement; or
4. To care for the employee's parent (excluding in-law) with a serious health condition.

Under the WFMLA, if you satisfy the eligibility requirements set forth in Section 1, above, you are entitled to ten (10) work weeks of leave in a calendar year as follows:

- A. A total of six (6) weeks of leave for the birth of your natural child and/or the placement of a child with you for, or as a precondition to, adoption;
- B. A total of two (2) weeks of leave to care for a covered family member with a serious health condition; and
- C. A total of two (2) week of leave due to your serious health condition.

Village policy calls for concurrent federal/state leave coverage whenever you are eligible for leave under both the FMLA and WFMLA.

### **4. DEFINITION OF SERIOUS HEALTH CONDITION**

In conjunction with the certification provided by a healthcare provider, the Village reserves the right to determine whether an illness, injury, impairment or physical or mental condition constitutes a serious health condition entitling you to family or medical leave under state or federal law.

**In general**, a "serious health condition" under this Policy means an illness, injury, impairment or physical or mental condition that involves one of the following:

A. Hospital Care.

Inpatient care (i.e., an overnight stay) in a hospital or other care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

B. Absence Plus Treatment.

(1) A period of incapacity of more than three (3) consecutive calendar days\* (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

(a) Treatment two (2) or more times by a healthcare provider, a nurse, physician's assistant or physical therapist under a healthcare provider's supervision, order or referral as appropriate; or

(b) Treatment by a healthcare provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the healthcare provider.

\* Under the WFMLA, leave may also be available for a "serious health condition" of less than three (3) consecutive days in duration.

C. Pregnancy.

Any period of incapacity due to pregnancy, or for prenatal care.

D. Chronic Conditions Requiring Treatment.

A chronic condition which:

(1) Requires periodic visits for treatment by a healthcare provider, or by a nurse or physician's assistant under a healthcare provider's supervision;

- (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- (3) May cause episodic rather than continuing periods of incapacity (e.g., asthma, diabetes, epilepsy, etc).

E. Permanent/Long-Term Conditions Requiring Supervision.

A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. You or your family member must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider. (e.g., Alzheimer's disease, a severe stroke, or the terminal stages of a disease).

F. Multiple Treatments (Non-Chronic Conditions).

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a healthcare provider or by a provider of healthcare services under orders of, or on referral by, a healthcare provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, including: cancer (chemotherapy, radiation, etc.); severe arthritis (physical therapy); or kidney disease (dialysis).

**5. REQUIRED STAFF MEMBER NOTICE**

You must provide the Village with notice in a reasonable and practicable manner before leave taken under this Policy is to begin, if the need for leave is foreseeable (e.g., an expected birth, placement or adoption or foster care, or planned medical treatment for your own serious health condition or that of a family member). When requesting partial or intermittent leave in connection with childbirth or adoption, you must provide at least as much notice as required for taking other non-emergency or non-medical leave, as well as a definite schedule for the leave. Where advance notice is not practical due to uncertainty as to when leave will be required to begin, a change in circumstances or medical emergency, notice must be given as soon as practical.

You must provide a written request for leave to the Administrator, or in his absence, give request to your department director or the Finance Director, the reasons for the requested leave, and the anticipated beginning date and duration of the leave by submitting a completed Request for Unpaid FMLA Leave to the Village.

When planning medical treatment, you should consult with your supervisor and make a reasonable effort to schedule the leave so as not to disrupt unduly the Village's operations, subject to the approval of your healthcare provider. You are ordinarily expected to consult with your supervisor in order to work out a treatment schedule which best suits your needs, as well as the Village's.

If you must take more leave than originally anticipated, you must notify the Village within two business days of learning of the circumstances necessitating the extension.

## **6. CERTIFICATION BY HEALTHCARE PROVIDER**

If you request leave due to your own serious health condition or the serious health condition of your spouse, child or parent, the Village requires that the leave request be supported by Certification issued and signed by the healthcare provider for the individual with a serious health condition. Medical Certification From Health Care Provider. The Village reserves the right to certify all information permitted by law.

You must provide the fully completed Certification to the Village within fifteen calendar days of the date that the Certification is provided to you, unless it is not practicable to do so despite your diligent, good faith efforts. If it is not practicable to return the Certification within fifteen calendar days, it must be returned to the Village as soon as practicable.

If you fail to submit the Certification, the leave or continuation of leave may be delayed until the Certification is submitted. Further, any absence prior to the date the Certification is furnished may be considered unauthorized. An employee who is absent without authorization may be disciplined, up to and including termination.

The Village will give you a reasonable opportunity to cure any deficiency in a Certification. It is the responsibility of the employee or family member with a serious health condition to use a health care provider who will timely complete and furnish an accurate Certification.

A health care provider representing the Village may contact the health care provider of the individual with the serious health condition, with their prior written consent, to clarify and authenticate the Certification.

If the Village doubts the validity of a Certification, it may require, at the Village's expense, that you obtain a second opinion from a Village-designated provider, not regularly

employed by the Village. If the opinions of your health care provider and the Village's health care provider differ, a third, final and binding opinion may be obtained.

The Village may request recertifications on a periodic basis as permitted by law.

## **7. DESIGNATION OF LEAVE**

In all circumstances, it is the responsibility of the Village to designate leave, whether paid or unpaid, as FMLA leave and to give you notice of the designation and your rights and obligations under this Policy. The designation of leave and notice of rights and obligations will be accomplished by providing to you the Village's Notice To Employee Concerning FMLA Leave.

The Village will give you the Notice on each occasion that you notify your supervisor of the need for leave that may be FMLA-qualifying, including, but not limited to, when you request another type of leave for an FMLA-qualifying reason. In the case of intermittent or reduced schedule leave, only one Notice will be provided unless the circumstances regarding the leave have changed.

Absent extenuating circumstances, the Village will, at a minimum, verbally notify you whether leave is being designated as FMLA leave within two business days of the date you provide information to the Village sufficient to enable it to determine that the leave is being taken for an FMLA-qualifying reason.

The Village will confirm the verbal notice with the written Notice as soon as feasible, but no later than the first payday following the verbal notice (unless the payday is less than one week after the verbal notice, in which case the notice must be no later than the subsequent payday).

If the Village knows the reason for leave, but has been unable to confirm that it is FMLA-qualifying, then the Village will make a preliminary designation on the Notice that the leave is FMLA-qualifying. This preliminary designation will automatically become final upon receipt of information that the leave is FMLA-qualifying. If the Village does not receive such information, it will give you written notice that the preliminary designation has been withdrawn.

## **8. MANNER IN WHICH LEAVE CAN BE TAKEN**

Leave available under this Policy may be taken in full and, under certain circumstances, may also be taken intermittently or on a reduced leave schedule. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. Reduced schedule leave is leave that reduces the usual number of working hours per day or week. You must consult with your supervisor and make a reasonable effort to schedule

intermittent or reduced schedule leave so it does not unduly disrupt the Village's operations.

Intermittent or reduced schedule leave due to a serious health condition must be medically necessary. Medically necessary means there must be a medical need for the leave and the leave can be best accommodated through an intermittent or reduced leave schedule, as certified by the health care provider in the Certification.

When leave is governed only by the FMLA, the Village may temporarily transfer you to another position for which you are qualified with equivalent pay and benefits that better accommodates the intermittent or reduced schedule leave when the need for leave is foreseeable based on planned medical treatment or you take such leave for the birth of a child or for placement of a child for adoption or foster care.

## **9. COORDINATING LEAVES - SUBSTITUTION**

Generally, leave taken under this Policy is unpaid. However, for leave governed exclusively by the FMLA, you must use the following leaves provided by the Village, if available:

- A. Vacation or personal leave, if available, for any family or medical leave;
- B. Accrued paid time off or sick leave, if available, to care for a seriously ill family member, or for your own serious health condition;
- C. Compensatory time for non-exempt employees.

You may not substitute paid leave for unpaid FMLA leave taken under this Policy in any situation where the Village would not normally provide such paid leave.

For leaves governed by the WFMLA, you may substitute paid or unpaid leave, which you have earned and accrued, for leave taken under this Policy, if available. The Village reserves the right to deny substitution as permitted by law.

Any paid leave substituted for unpaid FMLA leave or WFMLA leave will decrease, in whole or in part, your FMLA- and/or WFMLA-leave entitlement.

## **10. CONTINUATION OF BENEFITS**

You will remain eligible for group health insurance benefits under the Village's group health plan during leave taken under this Policy under the same conditions as coverage would have been provided if you have been actively employed during the entire leave.

However, you have the option of choosing not to retain such coverage during family or medical leave.

During leave taken under this Policy, the Village will continue to pay any portion of group health insurance premiums for coverage that it was responsible for paying immediately prior to the leave as required by law. You will be responsible for paying your portion of health insurance premiums regardless of whether your family and medical leave is paid or unpaid. It is your responsibility to make arrangements with the Village for making premium payments for group health insurance during leaves.

To the extent permitted by law, the Village reserves the right to require you to place up to eight (8) weeks of health insurance premiums in escrow prior to leave, or to discontinue coverage if such premiums are received more than thirty (30) days late.

Your entitlement to benefits other than group health benefits during a period of family or medical leave is determined by the Village's policy regarding provision of such benefits when you are on other types of leave.

If you fail to return to work or fail to remain at work for a period provided under the law, the Village may recover its portion of the premiums paid for medical benefit coverage during the leave.

#### **11. ACCRUAL OF BENEFITS**

The use of leave under this Policy will not result in the loss of any employment benefit that accrued prior to the start of your leave. You will not continue to accrue seniority or any other employment benefit during leave taken under this Policy, except that such benefit shall accrue if you elect to use other leaves provided by the Village, and if such benefits would normally accrue during such leave.

#### **12. EMPLOYMENT RESTORATION**

You will generally be reinstated to the same position you held when leave began or a position with equivalent pay, benefits, and other terms and conditions of employment, if such position remains available, and you possess the ability to perform the essential functions of the job satisfactorily, with or without any accommodation that may be required by the Americans With Disabilities Act of 1990. However, you have no greater right to reinstatement or benefits than if you had been actively employed during the leave. Further, if you give unequivocal notice of intent not to return to work, you are not entitled to be reinstated.

If you exceed your FMLA/WFMLA leave, but remain off work under a non-FMLA/WFMLA leave policy, you are not entitled to reinstatement to the same or a similar position under the FMLA/WFMLA; however, you may be eligible to be reinstated under the non-FMLA/WFMLA leave policy.

If you are able to return to work prior to the expiration of leave, you must notify your supervisor immediately. Upon such notice, the Village will promptly reinstate you to active employment, provided you have the present skill and ability to perform the essential functions of your job satisfactorily with or without accommodation. However, the reinstatement need not occur until the third business day following notification of your ability to return to work, provided the early return was foreseeable by at least two business days.

### **13. FITNESS-FOR-DUTY CERTIFICATION**

If leave is due to your serious health condition, you must present a fitness-for-duty certification to your supervisor upon returning to work. Your principal attending physician must complete the certification. The certification must indicate that you have been released to return to work. It must also specify any physical or other limitation on your ability to perform regular or other duties and the duration of the limitations. No certification will be required when you return from intermittent leave, except as otherwise permitted or required by the Americans With Disabilities Act of 1990.

The certification will be limited to the particular health condition that caused your need for leave, except as otherwise permitted by the Americans With Disabilities Act of 1990. If you are an "individual with a disability" within the meaning of the ADA, any fitness-for-duty physical examination or inquiry by the Village will be job-related and consistent with business necessity.

Reinstatement may be delayed until you submit the certification. Under such circumstances, if you do not promptly provide a certification or qualify for another leave of absence, you may be disciplined, up to and including termination.

With your permission, the Village's health care provider may contact your health care provider to clarify and authenticate the certification, but no additional information may be requested or required, and your return to work may not be delayed while the contact is being made. No second or third fitness-for-duty certification may be required.

### **14. CONFIDENTIALITY**

All medical information relating to leave, whether written or verbal, shall be kept confidential to the maximum extent possible. All medical documents including, but not limited to, medical certifications and return-to-work statements must be maintained in confidential, secure files separate from personnel files.

**15. NO DISCRIMINATION**

Leave under this Policy will not be used as a negative factor in employment actions, such as hiring, promotions, disciplinary actions or under attendance policies.

**16. MISCELLANEOUS**

If you fraudulently obtain leave under this Policy you are not protected by this Policy's job restoration or maintenance of health benefits provisions. Further, you will be subject to disciplinary action, up to and including termination.

The Village shall provide a copy of the policy to you upon your request.

