

VILLAGE OF BAYSIDE POLICY: HR009	Title: Family and Medical Leave Act (FMLA)	
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I. **PURPOSE**
This policy outlines the eligibility requirements and procedures for Village of Bayside employees under the Wisconsin Family and Medical Leave Act (FMLA), section 103.10, Wisconsin Statutes, and the Federal Family and Medical Leave Act (FMLA), 29 U.S.C. § et seq., as amended.

II. **POLICY**
It is the policy of the Village of Bayside to provide The Family and Medical Leave Acts provide eligible employees with up to 12 workweeks of unpaid protected leave each calendar year for specified family and medical reasons. The eligibility and entitlements are defined differently under federal and state law.

III. **WISCONSIN FAMILY AND MEDICAL LEAVE ACT (WISCONSIN FMLA)**

A. **Eligibility for Wisconsin FMLA**

1. To be eligible for Wisconsin FMLA, a Village employee must have completed 52 consecutive weeks of service, and at least 1,000 hours of service in the 52 weeks immediately prior to the leave commencing.

B. **Benefits Under the Wisconsin FMLA**

1. For an employee’s own serious health condition; 2 weeks
2. For the care of an employee’s spouse, domestic partner (as defined in section 40.02(21c) or section 770.01(1) of the Wisconsin Statutes), child, parent, parent-in-law or parent of domestic partner who has a serious health condition; 2 weeks.
3. In the case of leave to care for a child age eighteen (18) or older, the medical certification must establish that the child cannot care for himself or herself because of a serious health condition.
4. For the birth of the employee’s child, placement for adoption or foster care as a precondition to adoption under Wisconsin State Statute 48.90(2) or to care for the employee’s newborn child; 6 weeks.
5. An employee may substitute accrued paid time off, medical leave bank (MLB), sick, compensatory time, or vacation for unpaid Wisconsin FMLA leave.

IV. **FEDERAL FAMILY AND MEDICAL LEAVE ACT (FMLA)**

A. Employees are eligible for PTO upon hire or transfer into an eligible position.

1. To be eligible for federal FMLA leave, an employee must have worked for the Village of Bayside for 12 months, which need not be continuous, and also have worked a minimum of 1,250 hours during the previous 12 months. An employee does not have to have worked for 12 months in a row (seasonal work counts), but if there is a break in service that lasted more than seven years, the period of employment prior to the seven-year break does not count (except if the break was due to National Guard or Reserve duty, or a written agreement exists where the employer intends to rehire the employee after break in service).

B. Federal FMLA Benefits

1. The Federal FMLA entitles eligible Village employees to a combined maximum of twelve (12) weeks of leave per calendar year for any one or combination of the following reasons:

- a. For an employee's own serious health condition, such as an illness, injury, impairment, or physical or mental condition that also involves one of the following:
 1. Two (2) visits to a health care provider for the condition within 30 days of the first day of a period of incapacity, and the first visit to the provider must take place within seven (7) days of the first day of incapacity, or
 2. More than three (3) consecutive full calendar days of incapacity plus a regimen of continuing treatment or
 3. For a serious chronic health condition, at least two (2) visits to a health care provider per year.
- b. For the care of an employee's spouse, child, or parent who has a serious health condition.

In the case of leave to care for a child age eighteen (18) or older, in addition to having a serious health condition, the medical certification must establish that the child is incapable of self-care because of a mental or physical disability. The term "incapable of self-care" means that the person needs daily assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs), which include caring for one's grooming and hygiene, bathing, dressing, eating, cooking cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories and using a post office.

- c. For the birth, placement for adoption of to care for the employee's newborn child. Entitlement to leave in connection with the birth of a child expires twelve (12) months after the child is born or place for adoption.

C. Substitution of Paid Leave- Federal FMLA

1. Federal law permits an employee to substitute accrued medical leave bank, paid time off (PTO), vacation or compensatory time for unpaid FMLA leave.
2. Accrued sick leave may be used for Federal FMLA as specified in Section IV. B. 1. A. Sick leave may not be used for other federal FMLA provisions.
3. Federal law permits an employer to require that an employee substitute applicable accrued paid leave for unpaid FMLA leave and employees on FMLA leave under the federal law will be required to substitute such paid leave to the extent it is available. In the event an employee has more than one source of accrued paid leave available and eligible for substitution (such as vacation, compensatory time, paid time off, or medical leave bank), the employee may choose which source of other accrued paid leave shall be applied for substitution.

V. EMPLOYEE RESPONSIBILITIES

A. Provide Advance Notice for Leaves that are Foreseeable

For leaves that are foreseeable, an employee must submit a request for leave at least 30 days prior to when the leave would begin, or as soon as practicable, meaning the same business day or following business day that the need for leave became known. Any period of delay may result in the denial of FMLA leave.

B. Comply with Village Call-in

Employees must comply with the Village's notification policy or established call-in procedures for reporting absences. Any period of delay in notification may result in the denial of FMLA leave

C. Notifying the Department in an Emergency situation

In emergency situations, where the need for leave was not foreseeable (for example, a sudden serious health condition), an employee shall contact his or her immediate supervisor as well as the FMLA Administrator as soon as practicable following the beginning of the leave of absence. When this occurs, the leave may be approved on a provisional basis, with final approval being contingent upon receipt of the completed appropriate forms.

D. Provide Sufficient and Complete Information

Employees must provide sufficient and complete information regarding the reason they are requesting leave, the timing of the leave, and when they are expected to return to work.

E. Scheduling and Notice of Planned Medical Treatment or to Care for a Family member

If an employee intends to take FMLA because of planned medical treatment or for care of a spouse, parent or child, the employee must:

1. Make a reasonable effort to schedule the medical treatment or supervision so that it does not unduly disrupt their department's operations, subject to the approval of the health care provider involved; and

2. Give their department advance notice of the medical treatment or supervision in a reasonable and practicable manner.
- F. Notify the FMLA Administrator if there is a Need for Additional Leave Time
If an employee needs additional leave time, he/she must contact the FMLA Administrator prior to the time he/she is expected to return and make necessary arrangements. Failure to return from leave may result in loss of right to reinstatement.

VI. REQUIRED FORMS

A. Medical Certification Forms

1. For Employee's Serious Health Condition

- a. Employees must have their health care provider complete the Certification of Healthcare Provider for Employee's Serious Health Condition form. Information provided on the medical certification must be complete and sufficient.

2. Clarification of Information on Medical Certification Form

- a. If the medical certification is incomplete or insufficient, the FMLA Administrator must notify the affected employee via the FMLA Designation Notice, stating the additional information required. The Employee will have seven (7) calendar days to provide the additional information. If an employee fails to submit a complete and sufficient medical certification despite the opportunity to correct the deficiency, FMLA leave may be denied.
- b. The FMLA Administrator, but not the employee's immediate supervisor, may ask the employee's health care provider to clarify information provided on the medical certification form. The FMLA Administrator may contact the health care provider directly to authenticate a Certification. With the employee's written permission, FMLA Administrator may contact the employee's health care provider to clarify information on the medical certification or discuss incomplete information.

3. For Family Member's Serious Health Condition

- a. Employees must have a health care provider complete the Certification of Healthcare Provider for Family Member's Serious Health Condition form. Information provided on the medical certification must be complete and sufficient.

B. Recertification- Federal FMLA

1. The following events may trigger a requirement for medical recertification and the timing of the certification:
 - a. When a serious health condition extends beyond a single year an annual medical certification may be required in January or upon first request in new calendar year.

- b. A medical certification may be required every six (6) months in connection with a reported absence for Federal and/or State leave.
- c. When there is a significant change in the circumstances described in a previous certification (for example, the duration or frequency of the absence, the nature or severity of the illness, complications), a new medical certification may be required.
- d. When a certification is submitted under circumstances where there is reason to doubt the validity of the medical certification, a new medical certification may be required.

C. Return to Work Release- Federal FMLA

- 1. Notification to employee via the FMLA Designation Notice: At the time leave is approved the village will notify employees in writing whether a return to work release is required prior to returning to work.
- 2. A return to work release will be required from employees returning from continuous FMLA leaves of five (5) days or longer.
- 3. During intermittent or reduced schedule FMLA, a return to work release can be required every 30 days if a reasonable safety concern exists.
- 4. Required return to work release must be complete and sufficient. If a required return to work release is not complete or sufficient, employees will be notified in writing of the deficiencies and given seven (7) calendar days to provide the required information. If the employee fails to provide the required information, the Village of Bayside may delay the employee's return to work or deny the leave.

VII. ADDITIONAL PROVISIONS

- A. Wisconsin and Federal Family and Medical Leave Act benefits run concurrently for a combined maximum of 12 (twelve) weeks of FMLA per calendar year.
- B. Requires employees to substitute applicable paid leave to the extent it is available when utilizing Federal FMLA.
- C. Adopting the standard under Federal FMLA to limit spouses who are both employees of the Village to a combined total of twelve (12) weeks of FMLA leave during any calendar year for the birth or placement of a child or for the care of a parent with serious health condition.
- D. The Village will provide FMLA notices to the employee within five (5) business days.
- E. The employee will be restored to the same or an equivalent job upon return from leave.
- F. During an FMLA leave, the Village will maintain the employee's health and dental insurance coverage. Employees will continue to pay their share of the premium contributions for health and dental insurance during the time of their leave. While on unpaid FMLA, the

employee will be billed for their monthly premium and failure to make payments will result in termination of health and dental benefits.

- G. If the employee fails to return to work after taking FMLA leave and the failure is not due to circumstances which would otherwise entitle the employee to FMLA leave or are otherwise beyond the employee's control, the employee is liable for the payment of all health and dental insurance premiums paid by the Village during the unpaid portion of the FMLA leave.
- H. Employees may voluntarily settle or release their FMLA claims without court approval. Employees may not, however, prospectively or retroactively waive their FMLA rights.
- I. The Village shall adjust employees' service time for all unpaid FMLA leave periods.
- J. An employee absent from work due to leave under the FMLA is not entitled to unemployment compensation benefits.

VIII. FEDERAL MILITARY FAMILY LEAVE

A. Eligibility

1. To be eligible, an employee must have worked for the Village of Bayside for 12 months, which need not be continuous, and worked a minimum of 1,250 hours during the previous 12 months. An employee does not have to have worked for 12 months in a row (seasonal work counts), but if there is a break in service that lasted more than seven years, the period of employment prior to the seven-year break does not count, except if the break was due to National Guard or Reserve duty or a written agreement exists where the employer intends to rehire employee after break in service.
2. Village employees may not substitute paid sick leave for Federal Military Family Leave. Other forms of accrued paid leave, however, such as vacation, PTO, medical leave bank, and compensatory time, may be substituted for Federal Military Family Leave.
3. When spouses are both employed by the Village, they are limited to a combined total of 26 workweeks in a "single 12-month period" if the leave is to care for a covered servicemember with a serious injury or illness.

B. Military Caregiver Leave

Eligible employees may take up to 26 work weeks of unpaid time during a single 12- month period to care for a covered servicemember with a serious illness or injury incurred in the line of duty. Next of kin may qualify as caregivers.

1. An eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness may take up to a total of 26 workweeks of unpaid leave during a "single 12-month period" to care for the servicemember.
2. A "covered servicemember" is

- a. current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness or
 - b. a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness
3. A “covered veteran” is a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.
4. A “serious injury or illness” of a servicemember is one that
 - a. Was incurred by a servicemember in the line of duty on active duty, or
 - b. Existed before the beginning of the servicemember’s active duty and was aggravated by service in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating.
5. A “serious injury or illness” of a covered veteran is one that was incurred by the veteran in the line of duty on active duty (or existed before the beginning of the veteran’s active duty and was aggravated by service in the line of duty on active duty and manifested itself before the servicemember became a covered veteran and is either:
 - a. a continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember’s office, grade, rank or rating; or
 - b. a physical or mental condition for which the covered veteran has received U.S. Department of Veterans Affairs Service-Related Disability Rating of 50% or greater, and such rating is based in whole or in part, on the condition precipitating the need for leave; or
 - c. a physical or mental condition that substantially impairs the covered veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service; or
 - d. an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregiver.
6. The “single 12-month period” for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later.

7. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the “single 12-month period.” (Only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for a covered servicemember.)

C. Qualifying Exigency Leave

1. Eligible employees may use 12 unpaid work weeks of normal FMLA leave for “any qualifying exigency” arising from a member of the Regular Armed Forces, National Guard or Reserves called to active duty or on active duty as the result of a federal call to active duty with deployment to a foreign country.
2. An eligible employee may take up to a total of 12 workweeks of unpaid leave during the normal 12-month period established by the employer for FMLA leave for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation.
3. “Qualifying exigencies” are:
 - a. Issues arising from a covered military member’s short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven (7) days from the date of notification.
 - b. Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
 - c. Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
 - d. Making or updating financial and legal arrangements to address a covered military member’s absence.
 - e. Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active military member who is on short-term duty or call to active duty status of the covered military member;
 - f. Taking up to fifteen (15) days of leave to spend time with a covered temporary, rest and recuperation leave during deployment.

- g. Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member.

D. Intermittent Military Family Leave

- 1. FMLA leave may be taken intermittently whenever medically necessary to care for a covered servicemember with a serious injury or illness. FMLA leave also may be taken intermittently for a qualifying exigency arising out of the active duty status or call to active duty of a covered military member.
- 2. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the department's operation.

E. Notice Requirements for Military Family Leave

- 1. Employee Notice
 - a. Employees seeking to use military caregiver leave must provide 30 days advance notice of the need to take FMLA leave for planned medical treatment for a serious injury or illness of a covered servicemember. If it is foreseeable but 30 days advance notice is not practicable, the employee must provide notice as soon as practicable – generally, either the same or next business day.
 - b. An employee must provide notice of the need for foreseeable leave due to a qualifying exigency as soon as practicable.
 - c. When the need for military family leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case.
- 2. Designation of Leave as Counting Against FMLA Entitlements

When Military Family Leave is being taken for an FMLA-qualifying reason, the Village will notify the employee that the leave is designated and will be counted as FMLA leave. The Village will designate leave that qualifies as both leave to care for a covered servicemember with a serious injury or illness and leave to care for a qualifying family member with a serious health condition as leave to care for a covered servicemember in the first instance.

F. Certification Requirements for Military Family Leave

- 1. A request for military family leave must be supported by an appropriate certification in the form titled Certification of Qualifying Exigency for Military Family Leave or

Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave.

2. The Village may use a health care provider, a human resource professional, a departmental FMLA Administrator, or a management official – but not the employee’s direct supervisor – to authenticate or clarify a medical certification of a serious injury or illness, or an Invitational Travel Order or Invitational Travel Authorization.
3. The Village may contact the individual or entity named in a certification of leave for a qualifying exigency for purposes of verifying the existence and nature of the meeting.