

APPROVED \_\_\_\_\_



## FAMILY AND MEDICAL LEAVE POLICY

### I. GENERAL

The Alaska Family Leave Act of 1992 (AFLA), and the Family and Medical Leave Act of 1993 (FMLA) (including subsequent amendments) provides employees the right to take a leave of absence for certain family or medical reasons while maintaining job protection. The purpose of this policy is to inform all employees of the rights and responsibilities under these acts and to ensure that the Fairbanks North Star Borough conforms to the provisions of these Acts.

### II. PURPOSE

This policy is intended and expected to benefit employers as well as their employees. A direct correlation exists between stability in the family and productivity in the workplace, and to comply with the AFLA and FMLA. To the extent that this policy provides benefits beyond those required by AFLA and/or FMLA, the specific policy term is not an extension of those laws and its benefits.

### III. RESPONSIBILITY

- A. Department directors shall ensure that their department staff follows the procedure set forth in this policy.
- B. Compliance with this policy is the responsibility of all Borough employees.
- C. Human Resources shall maintain this policy.

### IV. POLICY

#### A. Family Medical Leave – Eligibility & Qualifying Circumstances

The Family and Medical Leave Act of 1993 (FMLA) provides a job-protected absence up to 12 weeks in a 12 month period to eligible employees for a qualifying condition.

The Alaska Family Leave Act of 1992 (AFLA) provides a job protected absence for up to 18 weeks in a 24- month period to eligible employees for a qualifying serious health condition. It also provides a job protected absence for up to 18 weeks in a 12 month period to eligible employees for pregnancy, childbirth or adoption.

The National Defense Authorization Act (NDAA) of 2009 (amended in 2010) provides military service entitlement for up to 12 weeks of leave for eligible employees because of “any qualifying exigency” and an entitlement for up to 26 weeks of leave for eligible employees related to a service member who is

recovering from a serious illness or injury sustained in the line of duty on active duty.

When an employee is eligible under both FMLA and AFLA, the entitlements run concurrently and the employee is entitled to the most generous benefit provided. The leave may be paid, unpaid, or a combination of both depending on the circumstances of the leave as specified in this policy.

In order to qualify for basic family or medical leave under this policy, employees must meet all of the following conditions:

1. The employee must have been employed by the Borough for at least 6 months or 26 weeks.
2. The employee must have worked (including paid absences and approved leave without pay) for a period of not less than 35 hours a week for at least 6 consecutive months, or for at least 17.5 hours a week for at least 12 consecutive months immediately preceding the leave.
3. The 6 month eligibility period for basic leave will be computed as a rolling 12 month period measured backward from the date leave is used.

*Qualifying Circumstances:*

In order to qualify for basic family medical leave under this policy, leave may be granted for one of the reasons listed below:

1. The birth of a child and in order to care for that child;
2. The placement of a child (other than a stepchild) with the employee for adoption or foster care;
3. To care for an employee's spouse, child, or parent with a serious health condition; or
4. The serious health condition of the employee.

#### B. Military Family Leave – Eligibility & Qualifying Circumstances

In order to qualify for military family leave under this policy, employees must meet all of the following conditions:

1. The employee must have been employed by the Borough for at least 12 months, or 52 weeks.
2. The employee must have worked (including paid absences) for a period of not less than 1,250 hours during the preceding 12 months.

*Qualifying Circumstances:*

In order to qualify for Military Family Leave under this policy, leave may be granted for one of the reasons below:

1. Qualifying Exigency Leave - Eligible employees with a spouse, son or daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use leave to address certain qualifying exigencies. Qualifying exigencies include short-notice deployment; military events, ceremonies, or programs related to active duty or related activities; childcare and school activities; parental care, pre-existing injuries or illnesses of current service members that were aggravated in the line of duty; financial or legal appointments; counseling; rest and recuperation; post-deployment activities; and additional activities agreed upon by the employer and employee or,
2. Military Caregiver Leave- Eligible employees that are the spouse, son or daughter, parent or next of kin of a covered service member may take FMLA leave to care for a covered service member with a serious injury or illness incurred in the line of duty on active duty for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. Includes a covered veteran, which is defined as an individual who is undergoing medical treatment, recuperation or therapy for a serious injury or illness, and 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.

#### C. Length of Qualified Leave

Eligible employees are entitled to up to 18 weeks of leave within 12 month period for:

1. Pregnancy and birth of a son or daughter of the employee; or
2. Placement of a child (other than a stepchild) with the employee for adoption or foster care.

Note: The right to take leave for these reasons expires on the date one year after the child's birth or placement of the child with the employee.

If spouses both work for the Borough, and each wishes to take leave for the birth, adoption, or foster care placement of a child with the employee, they may only take a combined total of 18 work weeks over a consecutive 12 month period of leave. Each spouse must take leave in a single consecutive block of time (see section F. Intermittent Leave or a Reduced Work Schedule for exception) Intermittent leave is not available for this circumstance.

Eligible employees are entitled to up to 12 weeks of leave within a 12 month period and up to 18 weeks within a 24 month period for:

1. The care of an employee's spouse, son, daughter, or parent with a serious health condition; or
2. The employee's own serious health condition that makes the employee unable to perform the essential functions of their job.

Under AFLA, if a parent or child of two related employees (e.g., siblings or spouses) has a serious health condition, each employee is entitled to 18 weeks but may take the time concurrently only with approval. Under FMLA, spouses share the 12-week entitlement to care for a serious health condition of their respective parents, and may divide the time between them as they wish; leave may be taken concurrently, with approval.

Eligible employees are entitled to up to 12 weeks of leave within a 12 month period for:

1. "Any qualifying exigency" arising out of the fact that the employee's spouse, son, daughter, or parent who is a member of the Armed Forces (including the National Guard and Reserves) is on active duty, or has been notified of an impending call to active duty status, in support of a family member deploying to a foreign country.

Exigency leave for rest and recuperation is established at a maximum of fifteen (15) days.

Eligible employees are entitled to up to 26 weeks of leave within a 12-month period for:

1. An eligible employee who is the spouse, child (of any age), parent (excluding parent-in-law), or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty.

#### D. Employee Status and Benefits During Leave

1. Employee Status
  - a. Should the employee's circumstances change at any time during the FML period, or if an employee has decided or is otherwise unable to return from FML, immediate notice to the Borough is required.
  - b. Periodically through the course of FML, the Borough may request the employee to verify their intent to return to Borough employment and may require recertification or follow-up confirming the continuation of the medical qualifying event.
  - c. It is the employee's responsibility to provide appropriate documentation and respond to the employer's requests. Failure to provide appropriate documentation may result in a denial of FML.

## 2. Employee Benefits

### a. Health Benefits & Premium Only Plans

- i. While an employee is on leave, the Borough 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. All Health and Premium Only Plans payments will continue to be deducted from the employee's paycheck for as long as the employee remains in paid status.
- ii. If an employee goes into leave without pay, the employee must continue to pay the employee share of premiums. These may be deducted, where possible, from the paycheck issued just prior to commencement of the Family Medical Leave, or paid directly to the FNSB. In the event advance deductions or payments are not made, premiums will be deducted from the first full paycheck upon return to work. Pay cannot be reduced below minimum wage, and therefore may require more than one pay period to recover payroll deductions.
- iii. If FML is extended beyond the original arrangements, or for an extended period of time, the employee will be notified in writing and required to make the employee's share of the Health and Premium Only Plan payments. The employee will then have a 30 day grace period in which to make the payment. If payment is not made within this timeframe, the employee's group healthcare coverage may be cancelled, provided the Borough notifies the employee in writing at least fifteen (15) days before the date on which the healthcare coverage will lapse.

### b. Supplemental Life or Supplemental Insurance (Colonial Life or AFLAC)

- i. Premiums must be paid during an employee's leave without pay.
- ii. Payment must be received by the first of the month by cash, personal check or credit card or through payroll deduction. The Borough will not advance premiums to the carrier if those premiums are not paid timely by the employee.
- iii. If payment is not received by the due date, the employee must contact the carrier to determine status and continuation of coverage.

### c. Flexible Spending Account

- i. If the employee has elected to pay into a Flexible Spending Account, the amounts specified to be withheld each pay period must be continued at the originally designated rate for the duration of leave without pay.

- ii. Since these deductions are withheld from pre-tax dollars, whenever possible, deductions will be taken in advance of the employee going into leave without pay status.
- iii. If funds are not available for these deductions to be taken in advance, all amounts will be deducted from the employee's first paycheck on return to work. Pay cannot be reduced below minimum wage, and therefore may require more than one pay period to recover payroll deductions. In the event an employee does not return to work all applicable deductions will be made from the employee's final paycheck.

d. 457 Deferred Compensation Plan

- i. If the employee has elected to contribute to a "457 Deferred Compensation Plan" contributions will be deducted as normal while in paid status.
- ii. If the employee should go into leave without pay status, all contributions will be discontinued for the period of leave without pay.
- iii. Upon the employee's return to work, contributions will commence at the previously designated amount.

E. Use of Paid and Unpaid Leave

An employee authorized for FML must use available leave (personal, compensatory, and personal holidays) prior to using leave without pay, except that employees may elect to retain up to twenty (20) days of personal leave in their leave account to use upon their return. Once an employee elects to retain the leave they cannot later change his/her mind and decide to use the leave during the FML qualifying event.

Taking LWOP that exceeds 10 days in a calendar year will have a negative impact on PERS service credit. It is the employee's responsibility to notify Payroll, prior to the payroll being processed, should they wish to retain hours.

F. Intermittent Leave or a Reduced Work Schedule

1. When intermittent FML is necessary and authorized due to the serious health condition of the employee or a qualified family member of the employee, the employee may take FML on an intermittent basis, per standard payroll processing in increments of .25 hours.
2. An employee may request a FML authorized reduced hour work schedule for the birth, adoption, or foster care of a child; however, intermittent leave is not permitted. A reduced hour work schedule must be mutually agreed upon by both the Borough and the employee and must be taken in a single block of time, concurrent with full-time FML, and not to exceed a total of 18 work weeks within a 12 month period.

3. The Borough may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the reduced hour schedule and/or intermittent leave.

#### G. Certification of the Serious Health Condition

1. The Borough requires certification of the serious health condition. The employee must respond to such a request within fifteen (15) days of notice, or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of FML. Medical certification will be provided by using the "Certification of Health Care Provider Form" contained in attachments to this policy. Periodically through the course of FML, the Borough may request recertification or follow-up confirming the continuation of the medical qualifying event.
2. Certification of the serious health condition shall include a description of the condition, the date when the condition began, its expected duration, and a brief statement of treatment. For FML for the employee's own medical condition, the certification must also include a statement that the employee is unable to perform work of any kind, or a statement that the employee is unable to perform the essential functions of the employee's position. For a seriously ill family member, the certification must include a statement that the patient requires assistance and that the employee's presence would be beneficial or desirable.
  - a. For military, an employee may request a second and third opinion from health care providers who are not affiliated with the military.
3. If the employee plans to request intermittent leave or work a reduced hour schedule, the certification must also include dates and the duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced hour schedule.
4. If the certificate does not include all required information needed to make the FML eligibility determination, the Borough will contact the employee who will be responsible for obtaining the information from the health care provider within a reasonable length of time.
5. The Borough has the right to ask for a second opinion if it has reason to doubt the certification. The Borough will pay for the employee to get a certification from a second doctor selected by the Borough.
6. If necessary to resolve a conflict between the original certification and the second opinion, the Borough will require the opinion of a third doctor. The Borough and the employee will jointly select the third doctor, and the Borough will pay for the opinion. This third opinion will be considered final.

#### H. Certification of Military Related Leave

1. The Borough requires the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military that indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service.
2. In addition, each time that an employee first requests leave for one of the qualifying exigencies, the Borough may require certification of the exigency necessitating leave. Certification supporting leave for a qualifying exigency includes: appropriate facts supporting the need for leave; including any available written documentation supporting the request; the date on which the qualifying exigency commenced or will commence and the end date; where leave will be needed on an intermittent basis, the frequency and duration of the qualifying exigency; and appropriate contact information if the exigency involves meeting with a third-party.
3. The employee must respond to such a request within 15 days of notice, or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of FML.

#### I. Responsibilities

1. Employees: It is the responsibility of the employee to promptly notify his/her supervisor of the request for time off required for family or medical reasons and to produce any required medical certifications within the time limits provided by the AFLA and FMLA. If the employee intends to retain personal leave, it is their responsibility to notify payroll in advance of the payroll processing.
2. Supervisors: It is the responsibility of the supervisor to notify Human Resources immediately when an employee has requested leave due to family or medical reasons. If an employee calls-in for three consecutive work days, the employee's supervisor should inquire as to whether the situation may qualify for FML, and notify the Human Resources Department immediately.
3. Human Resources: It is the responsibility of the Human Resources Office to notify the employee of his/her eligibility to take a designated family medical leave of absence within 5 business days of the date an employee requests FMLA/AFLA leave or the employer acquires knowledge that an employee's leave may be qualifying, absent extenuating circumstances.

#### V. PROCEDURE

##### A. Procedure for Requesting/Using FML

1. A request for FML must be completed and submitted to the Personnel/Payroll Manager as soon as the employee knows of the need to take FML. The Borough has the right to place an employee on FML whether or not the employee requests FML.

2. When an employee takes leave under this policy, the employee must give the Borough 30 days notice. An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to the Borough's operation, to include scheduling during off-hours when possible.
3. If an employee fails to provide 30 days notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied up to 30 days from the date the employer receives notice.
4. If it is not possible to give 30 days notice, the employee must give as much notice as is practicable, in accordance with the Borough's standard call-in procedures for reporting an absence. If an employee calls-in for three consecutive work days, the employee's supervisor should inquire as to whether the situation may qualify for FML and notify the Human Resources Department immediately.
5. All employees requesting or placed on FML under this policy must submit the Certification of Health Care Provider form to the Personnel/Payroll Manager for determination of a qualifying event under the FMLA.
  - a. The employer shall ensure confidentiality, as required by law, of the medical information provided under this policy, to include compliance with the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA).
6. When an employee uses leave under this policy, the leave request and timesheet must indicate FML.
7. While on FML, employees are required to report periodically to their supervisor or to the Personnel/Payroll Manager regarding the status of their medical condition, and their intent to return to work (generally every two-four weeks except for the birth, adoption or placement of a child). The supervisor must keep the Personnel/Payroll Manager apprised of FMLA status for their employees.

#### B. Procedure for Return to Work

1. An employee on leave for their own serious health condition will be required to obtain a release stating they are able to return to work prior to returning to active work status. If an intermittent or reduced hour work schedule is medically necessary the return to work release must state the limitations if any, number of hours per day work can be performed and the expected duration of such limitations. HR and the Department Director/Supervisor will determine if the limitations specified by the medical provider can be accommodated and will notify the employee of availability of work.

## VI. SUPPLEMENTAL INFORMATION

### A. References –

1. Family & Medical Leave Act (FMLA) of 1993 and amendments to the FMLA by the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181
2. Alaska Family Leave Act (AFLA) of September 16, 1992
3. U.S. Department of Labor Wage and Hour Division <http://www.dol.gov/whd/>

B. Definitions –

1. Health Care Provider is defined as any health care provider recognized by or accepted by the Borough's health benefit plan, or services furnished as a result of a referral while under the continuing supervision of a health care provider and recognized by a plan. (Includes but is not limited to a dentist, a physician or a psychologist.)
2. Serious health condition means an illness, injury, impairment, or physical or mental condition that involves any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice, or residential medical care facility; any period of incapacity requiring absence from work 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, or such conditions as asthma, diabetes, and pregnancy, which may have individual episodes of incapacity that are not more than three days, but are conditions which in the aggregate exceed three days.
3. Child includes biological, adopted or foster child, stepchild, or legal ward, or a child of a person standing in loco parentis, and who is (1) under 18 years of age; or (2) 18 years of age or older and incapable of self-care because of mental or physical disability.
4. Regular employees - this policy applies to all regular employees regardless of whether full-time or part-time for the 18-week period.
5. Part-time employees - will be prorated to full time. If the part-time employee's schedule varies week to week, a weekly average of the hours worked over the 12 months prior to the beginning of the leave period is used for calculation of the employee's normal work week. Individuals in seasonal positions are not considered employed during the seasonal leave without pay periods.
6. Spouse for purposes of taking FML leave means a person the employee is legally married to (includes same or opposite-sex marriages).
7. Parent for purposes of taking FML leave includes biological, adoptive, parents-in-law, stepparents, or persons standing in loco parentis.
8. Military leave is available for qualifying family members as specified in this policy.
9. Rolling year the immediate 12 month period prior to the first day of a qualifying FML event.

10. Key Employee key employees for the Borough are the Chief of Staff, Borough Attorney, and Borough Clerk. Key employees and elected officials are subject to the leave benefit under this policy, but are not guaranteed reinstatement to their position if the reinstatement causes substantial and grievous economic injury to the Borough (Per 29 C.F.R. 825-216(c)).

C. Attachments:

- 1. FMLA Employee Rights and Responsibilities
- 2. FMLA Request Form
- 3. FMLA Fact Sheets

D. Revision History

Supersedes

Policy No.	Effective Dates
35.10	6/8/04
35.10	7/27/11
35.10	8/15/12
35.10	8/20/13
35.10	5/9/14