

RESOLUTION NO. 23-2009

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, REPLACING SECTION 5.8 (I) OF THE TOWN OF MALABAR EMPLOYEE MANUAL; PROVIDING FOR A FAMILY MEDICAL LEAVE ACT POLICY PURSUANT TO THE FAMILY AND MEDICAL LEAVE ACT OF 1993 AS REVISED IN JANUARY 2009; PROVIDING FOR REPEAL OF RESOLUTIONS OR PARTS OF RESOLUTIONS IN CONFLICT HEREWITH; PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA, as follows

SECTION 1. Replacing Section 5, subsection 8 (I), of the Employee Manual with language contained in Exhibit "A"

SECTION 2. Conflict.

All resolutions, or parts of resolutions in conflict herewith are repealed.

SECTION 3. Effective date.

This Resolution shall take effect immediately upon passage.

This Resolution was moved for adoption by Council Member Rivet. The motion was seconded by Council Member Borton and, upon being put to a vote; the vote was as follows:

Council Member Nancy Borton	<u>Aye</u>
Council Member Brian Vail	<u>Aye</u>
Council Member Steven (Steve) Rivet	<u>Aye</u>
Council Member Jeffrey (Jeff) McKnight	<u>Aye</u>
Council Member Marisa Acquaviva	<u>Aye</u>

This Resolution was then declared to be duly passed and adopted this 16 th day of November, 2009.

By:

Thomas M. Eschenberg  
Mayor Thomas M. Eschenberg, Chair  
Town of Malabar

Approved as to form and content:

Karl W. Bohne  
Karl W. Bohne, Jr., Town Attorney

ATTEST:

Debby K. Franklin  
Debby K. Franklin  
Town Clerk/Treasurer  
(seal)

## SECTION 5 - BENEFITS Section 8 (I.) Revision

### I. Leave under the Family and Medical Leave Act of 1993 (FMLA)

#### **Policy:**

The Family and Medical Leave Act of 1993 (FMLA) provides job protection for eligible employees who must take certain types of leave. It is the policy of the Town of Malabar to comply with the provisions of the Family and Medical Leave Act by granting eligible employees leave for the reasons outlined below. Leave in accordance with this Act may be paid if the employee has a sufficient leave balance, or unpaid if all leave balances have been depleted. Refer to the section "Pay During Leave" for further required usage of leave balances. Family and Medical Leave will run concurrent with an employee's paid leave time or other form of unpaid leave for absences permitted under this law.

It is the responsibility of every employee to read and understand this Policy. Questions should be referred to the Town Manager. In the event of any conflict between this policy and the applicable FMLA regulations, the regulations will govern.

#### **Basic Leave:**

For eligible employees, up to 12 weeks of unpaid leave, in a 12-month period, is available for one or more of the following purposes:

- For the birth and care of a newborn child of the employee;
- For the care and/or placement of a child for adoption or foster care;
- To care for a spouse, child, or parent who has a serious health condition; a child, for purposes of this policy, includes an individual who is either (1) under the age of 18 or (2) older than 18 but incapable of self-care because of a physical or mental disability;
- For your own serious health condition

The 12-month period for "Basic Leave" is measured on a "rolling" basis. Leave measured on a rolling basis is measured backward from the date an employee uses any FMLA leave.

#### **Qualifying Exigency Leave:**

For eligible employees, up to 12 weeks of unpaid leave, in a 12-month period, is available for an eligible employee where the employee's spouse, son, daughter or parent is on active military duty or call to active duty status, and leave is needed for a "qualifying exigency";

A "qualifying exigency" is:

- (a) Short notice deployment;

- (b) Military events and related activities;
- (c) Childcare and school activities;
- (d) For the purpose of making financial and legal arrangements;
- (e) Rest and recuperation;
- (f) Post-deployment activities; and/or,
- (g) Additional qualifying activities

The "rolling" method used for measuring "Basic Leave" is also used to measure the 12-month period for "Qualifying Exigency Leave".

**Covered Servicemember Care Leave:**

Leave is available for an eligible employee to care for a spouse, child, parent or next-of-kin who is a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, National Guard or Reserves who is on the temporary disability list, and who has a serious injury or illness incurred in the line of duty for which he or she is undergoing medical treatment, recuperation, or therapy; or, otherwise in outpatient status; or, otherwise on the temporary disability retired list.

Next-of-kin of a covered servicemember is the nearest blood relative other than the covered servicemember's spouse, son, or daughter, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes military caregiver leave under the FMLA.

For Covered Servicemember Care leave, an employee is entitled to 26 workweeks of leave during any single 12-month period measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins.

**Intermittent Leave:**

You may take leave intermittently, as blocks of time off or in the form of reducing your normal weekly or daily schedule. Intermittent leave may only be taken for the birth of a child or placement of a child for adoption or foster care upon the approval of the Town Manager. If you need leave intermittently or on a reduced-leave schedule for planned medical treatment, it is your obligation to schedule the treatment so as not to unduly disrupt the Town's operations. Further, intermittent leave or leave on a reduced-leave schedule must be medically necessary due to a serious health condition or a serious injury or illness, except in the case of intermittent leave for a Qualifying Exigency.

**Giving Notice of the Need for Leave:**

Absent extenuating circumstances, an employee must provide the Town with at least 30 days' advance written notice before FMLA leave is to begin. Your failure to do so may cause delay or denial of leave.

If the need for leave is unforeseeable, then you must provide notice to the Town as soon as practicable under the facts and circumstances of your particular situation. For unforeseen leave, you must follow the normal procedure for contacting your supervisor to report an absence.

**Eligibility:**

The Town will generally notify you within 5 business days of receipt of your request for FMLA leave of your eligibility to take Family and Medical Leave. If you are not eligible, the Town will tell you why.

Employees are eligible for unpaid FMLA leave if they: (1) have a cumulative (not necessarily continuous) 12 months of prior service; (2) have worked at least 1250 hours during the 12 months immediately preceding the date on which the FMLA leave would commence.

**Providing Evidence of Need for Leave:**

In most cases, the Town will request that the employee provide additional information regarding certification of the leave by providing the employee with a Certification form, specific to the type of leave the employee is requesting, to be completed and returned to the Town Manager. Certification forms and any other requested documentation must be returned to the Town Manager within 15 days of the Town's request for Certification (absent extenuating circumstances).

**Designation of Leave:**

Within five (5) business days after the employee has submitted the appropriate Certification form and/or the Town has sufficient information to determine whether the leave requested is FMLA covered, the Town will complete and provide the employee with a written response to the employee's request for FMLA leave.

**Intent to Return to Work from FMLA Leave:**

Consistent with the manner in which the Town addresses other types of medical and personal leave, the Town may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

**Pay During Leave:**

If the reason for the leave is also covered by the Town's vacation and sick leave policies and you have available sick or vacation leave, you are required to use your sick and vacation leave while taking FMLA leave. In other words, on commencing FMLA leave, you are required to simultaneously take any paid leave for which you are eligible, including vacation time. Once paid leave is exhausted, you will go on unpaid leave. Both paid and unpaid leave count towards the 12 or 26-week (in the case of Covered Servicemember Care Leave) limit.

Leave taken pursuant to a Town disability leave plan or leave due to a workers' compensation absence will be counted as FMLA leave if it meets the above criteria for a serious health condition. While such leave would run concurrently with FMLA leave, an employee will not be required to use paid vacation or sick leave while they are receiving disability pay or supplemental pay through

workers' compensation. However, the Town and the employee may agree to have paid leave supplement such benefits.

**Benefits during Leave:**

Health care benefits will be maintained during leave. However, you must continue to pay your share of any premiums. Should you fall more than thirty (30) days behind in doing so, your coverage may be canceled. In addition, should you fail to return to work at the expiration of your leave, under certain conditions, the Town is entitled to recover any premiums it paid on your behalf in order to maintain your coverage.

**Return from Leave:**

Upon your being released to return to work, you will be restored to your same or equivalent position, unless you would not otherwise have been employed at the time of reinstatement (e.g., due to an intervening reduction in force or discharge for misconduct or poor performance). The Town reserves the right not to rehire a "key" employee if rehire would cause substantial economic harm to the business of the Town. Key employees are the Town Administrator and the Town Clerk/Treasurer.

**Return from Leave: Fitness-For-Duty Certification:**

Any employee who takes leave for the employee's own serious health condition will be required, as a condition of restoration, to obtain and provide certification that the employee is able to resume work and is able to perform the essential functions of his or her job. The cost of the Fitness-for-Duty Certification is paid by the employee. The Town may delay or deny restoration to employment if a Fitness-for-Duty Certification is not provided. The Town will request a Fitness-for-Duty Certification for leave taken on an intermittent or reduced-leave schedule basis, if reasonable safety concerns exist regarding the employee's ability to perform his or her duties based on the serious health condition for which the employee took leave.

**Taking More than the Allowed Leave:**

The Town is unable to keep jobs open indefinitely. If an employee fails to return to work at the end of an approved leave of absence, including any extension of the leave, the employee will be considered to have voluntarily terminated employment.