

FRAMINGHAM HOUSING AUTHORITY
Family & Medical Leave Policy
Adopted

Coverage. All eligible employees.

Policy.

- a. In accordance with the Family and Medical Leave act of 1993 ("FMLA") and final rulings issued to the Act in 1995, eligible employees may take up to 12 weeks of unpaid job-protected leave each year for specified family and medical reasons.
- b. Employee Eligibility: In order to be eligible for FMLA benefits, an employee must:
 - (1) Have worked for the FHA for a total of at least 12 months;
 - (2) Have worked at least 1,250 hours over the previous 12 months;
- c. Reasons for FMLA Leave
 - (1) An eligible employee will be granted up to a total of 12 weeks unpaid leave during a 12-month period ("window period") for one or more of the following reasons:
 - For the birth of a child and to take care of a newborn child (leave must be completed within 12 months of the date of birth).
 - For the placement with the employee of a child for adoption of foster care (leave must be completed within 12 months of the date of placement).
 - To care for an immediate family member (spouse, child, or parent) with a serious health condition.
 - The employee is unable to perform the functions of his or her job because of serious health condition (including conditions related to pregnancy and childbirth).
 - (2) Employees may take up to 26 weeks of Military Caregiver Leave during a single 12 month period.
 - Qualifying Exigency Leave: Eligible employees with a spouse, son, daughter, or parent on active duty or called to active duty status in the National Guard or Reserves or regular armed forces who are in or called to active duty in a foreign country in support of a contingency operation may use FMLA leave to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangement, attending certain counseling sessions and attending post-deployment reintegration briefings.

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Covered active duty means:

1. for members of the **Regular** Armed Forces, duty during deployment of the member with the Armed Forces to a foreign country; or
2. for members of the **Reserve** components of the Armed Forces (members of the National Guard and Reserves), duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation.

- **Military Caregiver**

Eligible employees may take FMLA leave to care for a covered service member. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties 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. Leave is also available to care for a veteran with injuries or illnesses that were incurred, or were aggravated and manifested in the line of duty during the preceding five year period.

A covered service-member is either:

- 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 in outpatient status, or is on the temporary disability retired list, for a serious injury or illness, or
- a **veteran** of the Armed Forces (including the National Guard or Reserves) dishonorably discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered service-member.

For the purposes of calculating the 12-month window period referred to above, the FHA will measure the 12-month period backward from the date of an employee's request for FMLA leave. Each time an employee takes FMLA leave, the FHA will determine the total amount of FMLA leave used by the employee during the preceding 12 months, and the remaining time available to the employee will be the balance of 12 weeks or 26 weeks which have not been used.

Leave for the birth of a child or placement of a child for adoption or foster care must conclude within 12 weeks of the birth or placement. Any leave taken by an eligible employee for any reasons covered by this policy will be considered FMLA leave and will be designated as such even if the employee does not identify specifically the time off as a FMLA leave.

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d. **Intermittent or Reduced Leaves**

FMLA leave may be taken intermittently or on a reduced schedule basis whenever medically necessary to care for a family member with a serious health condition or because the employee is unable to work due to a serious health condition. Generally, FMLA leave will be counted in increments of one hour. If any employee is out of work for an hour or more on FMLA eligible leave, he or she should discuss this fact with the Executive Director or designee. In order to calculate accurate records for these days, the Executive Director or designee will ask any employee who will be or is absent from work whether the employee is absent due to an FMLA-qualified reason and thus requesting FMLA leave.

Employees needing intermittent or reduced schedule FMLA leave must attempt to schedule their leave so as not to disrupt the Authority's operations. In addition, the FHA may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

e. **Definition of Serious Health Condition and Health Care Provider**

"Serious health condition" means an injury, an illness, impairment, or physical or mental condition that involves one of the following:

- In-patient care (an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care.
- 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:
 - (1) Treatment two or more times by a health care provider, a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g. physical therapist) under orders of, or on referral by, a health care provider, or
 - (2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
- Any period of incapacity due to pregnancy, for prenatal care, or childbirth.
- Any period of incapacity or treatment for such incapacity due to a chronic serious health condition which:

- (1) Requires periodic visits for treatment by a health care provider or by a nurse or physician's assistant under the direct supervision of a health care provider;
- (2) Continues over an extended period of time (including recurring episodes of single underlying condition); and
- (3) May cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.).

- A period of incapacity, which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, severe stroke, or the terminal stages of a disease.
- Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider of health care services under orders of, or on referral by, a health care 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 (3) consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) or kidney disease (dialysis).

"Incapacity" means inability to work, attend school or perform other daily activities due to the serious health condition, treatment therefore, or recovery there from. "Treatment" includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical exams, or eye or dental exams.

A "regimen of continuing treatment" includes, for example, a course of prescription (e.g. an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines or salves; or bed-rest; drinking fluids, exercise and other similar activities that can be initiated without a visit to the health care provider.

"Health care provider" means:

- Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices;
- Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a sublimation as

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demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practices, as defined under state law;

- Nurse practitioners, nurse midwives, and clinical social workers authorized to practice, and performing within the scope of their practices, as defined under state law;
- Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
- Any health care provider from whom the FHA or the FHA's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for health benefits; or
- A health care provider who practices in a country other than the U.S., who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

f. Request for FMLA Leave and Medical Certification:

Employee's seeking to use FMLA leave must submit a written request to the Executive Director or designee. When it is foreseeable, employees must provide 30 days advance notice of taking FMLA leave. When leave is not foreseeable, such as during a medical emergency, notice must be given as soon as practicable and ordinarily within 1 or 2 business days of when the employee learns of the need for the leave. When a leave is needed due to a serious health condition affecting the employee or the employee's spouse, child, or parent, the employee must submit a medical certification form supporting the need for the leave.

Such medical certification should be provided prior to the beginning of the leave and should include: the date on which the illness/condition commenced; the estimated duration of the illness/condition; a statement that the illness/condition warrants the participation of the employee to provide care (in cases of ill family member); and in cases which intermittent leave is advised, the dates and duration of treatment to be given.

In certain circumstances, a second medical opinion and periodic re-certifications (at the FHA's expense) may be required as well as periodic reports during the FMLA leave regarding the employee's status and intent to return to work. The FHA will choose the health care provider for the second opinion. In the event that there is a dispute between the first and second medical certifications, a third certification (at the FHA's expense) will be obtained and used as a final decision.

Copies of the medical certification will not be placed in the employee's personnel file but will be kept in a separate, secure file.

Adopted:

Failure to provide requested information in a timely manner may result in the delay or denial of FMLA leave.

g. Notice of FMLA Rights by Management

It is the responsibility of management to provide information to employees regarding their rights under the FMLA. Employees will be notified either by letter of the defined leave period that will be counted towards their FMLA entitlement.

h. Returning to Work Following FMLA Leave:

Upon return from FMLA leave, an employee will be restored to his or her original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions. In addition, an employee's use of FMLA leave will not result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.

Notwithstanding the above, an employee who has taken FMLA leave has no greater right to reinstatement or to other benefits and/or terms or conditions of employment than if the employee had been employed continuously during the FMLA leave period. For example, an employee will not be restored to the job if the employee was hired for a specific term or project which has expired, or the position has been eliminated due to a reduction in force and the FHA otherwise would not have continued to employ the employee.

In cases of leave related to an employee's own serious health condition, notice from the health care provider certifying the employee's ability to return to work will be required.

i. "Key" Employee Exception to Job Restoration:

Under specified and limited circumstances where restoration to employment will cause substantial and grievous economic injury to its operations, the FHA may refuse to reinstate certain highly paid employees after using FMLA leave during which health coverage was maintained. In order to do so, the FHA will:

- Notify the employee of his or her status as a "key" employee in response to the employee's notice of intent to take FMLA leave;
- Notify the employee as soon as the FHA decides it will deny job restoration and explain the reasons for this decision;
- Offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice;

- Make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration once again.

A "key" employee is a salaried eligible employee who is among the highest paid 10% of employees within 75 miles of the worksite in which that employee is employed.

j. **Health and Other Insurance Benefits:**

The FHA will maintain group health insurance for an employee on FMLA leave whenever the employee received such insurance before the leave was taken on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave. If an employee fails to pay his or her portion of health premiums while on leave for more than 30 days after the payment due date, the FHA may cancel the insurance coverage during the remainder of the leave.

In some instances, the FHA may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

k. **Other Provisions:**

Salaried executive, administrative and professional employees of covered employer who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to "eligible" employees' use of leave required by FMLA. The FMLA protects employees from the unlawful interference with, restraint or denial of the exercise of any right provided by the FMLA. The Act also protects against unlawful discrimination against any person for opposing any practice or because of involvement in any proceeding related to the FMLA.

l. **Coordination With Other Laws**

The provisions of this policy are intended to be consistent with the FMLA regulations. This policy is not intended to conflict with the FHA's obligations under any other federal or state law, which prohibits discrimination, nor does it supersede any state or local law, which provides greater family or medical leave protection.

Questions relating to FMLA leaves may be directed to the Executive Director or Deputy Director.

Adopted:

Payroll

based on their respective unemployment compensation histories, as calculated by DET, or by tendering payment on a monthly or quarterly basis, on a pay-as-you-go basis, for benefits paid by DET.

Family and Medical Leave Act of 1993 (FMLA)

FMLA requires "covered employers," i.e., employers who employed 50 or more employees for each working day during 20 or more calendar workweeks in the current or preceding calendar year, to provide up to 12 weeks of unpaid job-protected leave to "eligible" employees for certain family and medical reasons. An eligible employee must work at a worksite that employs 50 or more employees within 75 miles, and the employee must have been employed for at least: (1) 12 months (need not be consecutive); and (2) worked 1,250 hours during the previous 12-month period.

Reasons for Taking Leave

An employee may take leave under FMLA for any of the following reasons: (1) birth of a child and to care for the newborn child after birth, (2) placement of a child for adoption or foster care, (3) care for a spouse, son, daughter or parent with a serious health condition, or (4) serious health condition that renders the employee unable to perform one or more of the essential functions of the job.

Advance Notice and Medical Certification

An employee seeking leave under FMLA may be required to provide the employer with advance notice of a request for leave. Generally, an employee must provide at least 30 days advance notice when the request is "foreseeable." The employer may also require an employee to provide medical certification in support of a request for leave because of a serious health condition. Further, the employer may require that employee to obtain a second or third opinion (at the employer's expense). The employer may deny a request for leave if the employee fails to meet these requirements. Finally, an employer may require an employee who takes leave because of a serious health condition to provide a fitness report before returning to work.

Job Benefits and Protection

An employer must maintain an employee on group health coverage for the duration of FMLA leave. The employee need pay only the employee's share of the health insurance premium. If, however, the employee does not work after FMLA leave, an employer may charge the employee for the employer's share of the coverage during the leave. Upon the employee's return to work, the employee must be restored to the original or an equivalent pay, benefits, and other employment terms. The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Employers may not interfere with, restrain, or deny an employee's exercise of any FMLA right. In addition, employers may not discharge or discriminate against any employee involved in any proceeding under or relating to FMLA.

Massachusetts Maternity Leave Act (149:105D)

The Massachusetts Maternity Leave Act permits a female employee to take up to 8 weeks of unpaid leave upon (1) the birth of a child, (2) the adoption of a child under 18 years old, or (3) the adoption of a person under 23 years old who is mentally or physically disabled.

By its terms MMLA provides maternity leave to female employees only. However, providing these benefits only to female employees would, in most circumstances, constitute sex discrimination in violation of CH. 151 B. An employer who provided such leave only to female employees, and not to male employees might also violate federal prohibitions against sex discrimination, even though the employer had acted in compliance with MMLA.

To be eligible for MMLA benefits, an employee must have worked for the employer in a full-time position for at least three months or have finished a probationary period (which cannot exceed six months), and the employer must give the employer two weeks notice of (a) the departure date and (b) an intention to return to the job.

Under return to employment, the employer must restore the employee to the same position or to a reasonably similar position with the same status, pay, length of service credit and seniority.

The Massachusetts Commission against Discrimination (MCAD) enforces MMLA.

Fair Labor Standards Act (29 USCA §§ 201-219)

Federal legislation, known as the "Fair Labor Standards Act" establishes minimum wages, overtime pay, record-keeping requirements and child labor standards for federal, state, and local governments as well as most workers in the private sector. While this legislation was passed many years ago, it is still extremely important to follow its requirements. The federal government has conducted audits of Massachusetts communities in recent years and fined those not in compliance.

Overtime Provision and Record Keeping

Under FLSA, employers must maintain all records pertaining to wages, hours, and other types of pay. Calculations for overtime pay must be readily available and discernable as to the makeup of the overtime rates paid. Treasurers need either to keep these records themselves, or make sure that departments involved are keeping the required detail.