



BOROUGH OF HANOVER

ADOPTED JANUARY 27, 2021

FAMILY MEDICAL LEAVE POLICY

As an employee of the Borough of Hanover (the “Borough”), you may be eligible to take unpaid family and medical leave under the federal Family and Medical Leave Act (FMLA). This policy provides an introduction to the rights and provisions of the federal FMLA. An FMLA summary that is based on the Department of Labor’s (DOL’s) model notice is attached to this policy and further explains the FMLA. If you have questions regarding the FMLA, please contact Human Resources.

Eligibility

To be eligible for leave, you must have been employed by the Borough for at least 12 months. In the 12 months immediately preceding the beginning of the leave, you must also have worked at least 1,250 hours to qualify for federal FMLA. In addition, you must work in an office or work site where 50 or more employees are employed within 75 miles of that office or work site.

Amount of Leave Available

Eligible employees may take up to a total of 12 weeks of FMLA leave within a rolling 12-month period, measured backward from the date an employee uses any FMLA leave, for any combination of the following reasons:

- The birth of an employee’s newborn child and in order to care for such child, or the placement of a child with the employee for adoption or foster care
- To care for the employee’s spouse, child or parent with a serious health condition
- The employee has a serious health condition that makes him or her unable to perform the functions of their job
- A qualifying exigency that arises because the employee’s spouse, child or parent is a covered military member on covered active duty (or has been notified of an impending call or order to covered active duty)

Where leave is taken to care for a covered service member with a serious injury or illness, a spouse, child, parent or next of kin of the covered service member may take up to 26 weeks of unpaid FMLA leave during a single 12-month period. Eligible employees are limited to a total of 26 workweeks of FMLA-protected leave during that 12-month period. For example, an employee cannot take 26 workweeks of FMLA leave to care for a covered service member and then take 12 more weeks for other FMLA qualifying reasons.

Under the federal FMLA, spouses employed by the Borough are jointly entitled to a combined total of 12 weeks of leave for the birth of a newborn child, for the placement of a child for adoption or foster care and to care for a parent who has a serious health condition. The federal FMLA does not cover care for parents-in-law. Spouses employed by the Borough are jointly entitled to a combined total of 26 weeks of leave to care for a covered service member.

Types of Leave Available

Birth or Placement for Adoption or Foster Care: FMLA leave is available to eligible male and female employees for the birth of a child or for the placement of a child with the employee for purposes of adoption or foster care. FMLA leave must be completed within 12 months of the birth or placement. This type of leave may not be taken intermittently or on a reduced schedule unless the Borough agrees to this request. See below for more details on non-continuous leave.

Serious Health Condition of Employee: If, as an eligible employee, you experience a serious health condition as defined by the FMLA, you may take medical leave under this policy (see “Definitions” for the definition of serious health condition). A serious health condition generally occurs when you:

- Receive inpatient care in a hospital, hospice or nursing home
- Suffer a period of incapacity accompanied by continuing outpatient treatment or care by a health care provider
- Have a history of a chronic condition that may cause episodes of incapacity

The following provisions apply to leave for the serious health condition of an employee:

- *Non-continuous leave*—Medical leave may be taken all at once or, when medically necessary, intermittently or on a reduced leave schedule (see below).
- *Certification process*—The need for leave must be documented by your treating health care provider through our medical certification process (see below).
- *Fitness-for-duty statement*—A fitness-for-duty statement will be required in order for you to return from a medical leave. Failure to provide the statement will result in a delay in your return to work.

Serious Health Condition of Immediate Family Member: If, as an eligible employee, you need family leave in order to care for your child, spouse or parent who experiences a serious health condition as defined by the FMLA (see “Definitions” for definitions of child, spouse, parent and serious health condition), you may take a leave under this policy.

- *Non-continuous leave*—Leave may be taken all at once or, when medically necessary, intermittently or on a reduced leave schedule (see below).
- *Certification process*—The need for leave must be documented by the family member’s treating health care provider through our medical certification process (see below).

Qualifying Exigency Because of Active Duty: If, as an eligible employee, you need family leave because of any qualifying exigency arising out of the fact that your spouse, son, daughter or parent is on covered active duty in the Armed Forces (including the National Guard or Reserves), or has been notified that they will be called or ordered to covered active duty in the Armed Forces (including the National Guard or Reserves), you may take family leave under this policy. (See “Definitions” for a definition of qualifying exigency)

Service Member Family Leave: If, as an eligible employee, you need family leave to care for a covered service member who is your spouse, child, parent or next of kin and 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, you may take up to 26 weeks of unpaid leave during a single 12-month period under this policy. (See “Definitions” for a definition of covered service member and serious injury or illness)

Effective March 8, 2013, an eligible employee may take service member family leave to care for a covered veteran who is the employee’s spouse, child, parent or next of kin and who is undergoing medical treatment, recuperation or therapy for a serious injury or illness. (See “Definitions” for a definition of covered veteran)

- *Non-continuous leave*—Service member family leave may be taken all at once or, when medically necessary, intermittently or on a reduced leave schedule (see below).
- *Certification process*—The need for leave must be documented by the family member’s treating health care provider through our medical certification process (see below).

Notifying the Borough of the Need for Family or Medical Leave

Generally, an application for leave must be completed for all leave taken under this policy. A non-emergency leave should generally be requested from Human Resources at least 30 days, or as soon as practical, in advance of the date the leave is expected to begin. In cases of emergency, you (or your representative, if you are incapacitated) should give verbal notice as soon as possible, and the application form should be completed as soon as practical. Failure to provide adequate notice may, in the case of foreseeable leave, result in a delay or denial of leave. It is your responsibility to notify your manager and Human Resources of absences that may be covered by the FMLA.

You must provide sufficient information regarding the reason for an absence for the Company to know that protection may exist under this policy. Failure to provide this information will result in delay or forfeiture of rights under this policy. This means the absence may then be counted against your record for purposes of discipline for attendance or similar matters.

Medical Certification Process

In addition to an application for leave, you will be required to complete a medical certification form when leave is for a family member’s or your own serious health condition. The certification form needs to be signed by the health care provider. The short-term disability certification may be sufficient where the information required is duplicative. These forms are available from Human Resources. Second or third certifications from health care providers and periodic recertification at the Borough’s or your expense may be required under certain circumstances.

We may also require periodic reports during federal FMLA leave regarding your status and intent to return to work.

Military Family Leave Certifications

In addition to an application for leave, you will be required to complete a Certification of Qualifying Exigency for Military Family Leave form when leave is for a qualifying exigency. A copy of the military member’s active duty orders or other military documentation may also be required to substantiate your need for FMLA leave.

If you request leave to care for a covered service member with a serious injury or illness, you will be required to complete a medical certification form, which must be signed by the service member’s health care provider. The certification form will request additional information, such as information regarding the relationship between you and the covered service member, to substantiate your need for FMLA leave.

Substituting Paid Leave for Unpaid Leave

Federal FMLA leave is unpaid. The Borough requires you to substitute available paid leave (sick, vacation, etc.) during your absence. When you substitute vacation days or other paid leave, the absence will be counted against your entitlement to FMLA leave under this policy and will not extend your leave. In other words, you are using your paid leave concurrently with your FMLA leave.

When an employee is absent due to a work-related illness or injury that meets the definition of a serious health condition, the absence will be counted against the employee’s entitlement under this policy. In other words, the employee is using FMLA leave concurrently with the workers’ compensation absence. An employee is not required to substitute paid time off for an absence covered under workers’ compensation.

You may be paid for all or part of a medical leave to the extent you are eligible for benefits such as short-term disability. An employee is not required to substitute paid time off for an absence covered under a disability benefit plan.

Non-Continuous Leave

Intermittent or reduced leave will be permitted only when it is medically necessary or for a qualifying exigency, as explained above. In all cases, the total amount of leave taken in a rolling 12-month period should not exceed your total allotment as defined earlier in this policy.

Intermittent and reduced schedule leave must be scheduled with minimal disruption to an employee's job. To the extent possible, medical appointments and treatments related to an employee's or family member's serious health condition should be scheduled outside of working hours or at such times that allow for a minimal amount of time away from work.

If you request non-continuous federal FMLA leave which is foreseeable based on planned medical treatment for yourself, a family member or a covered service member, you may be required to transfer temporarily to an available alternative position offered by the Borough for which you are qualified and which better accommodates recurring periods of leave than your regular employment position. You will be entitled to equivalent pay and benefits, but will not necessarily be assigned the same duties in the alternative position. This provision may also apply if the Borough approves a non-continuous leave for the birth of a child or the placement of a child for adoption or foster care.

Benefit Continuation during Leave

The Borough will maintain your group health plan coverage and certain other employment benefits (such as group life insurance, AD&D insurance and health and dependent flexible spending accounts) during your FMLA leave on the same terms as if you had continued to work, if these benefits were provided to you before the leave was taken. You will be required to pay your regular portion of premiums – contact Human Resources for an explanation of your options.

Benefits that are accumulated based upon hours worked will not accumulate during the period of FMLA leave.

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

Returning to Work

If the reason for FMLA leave is for your own serious health condition, you will be required to present a fitness-for-duty certification immediately upon return to work.

If you wish to return to work before the scheduled expiration of FMLA leave, you must notify the Borough of the change in circumstances as soon as possible, but no later than two working days prior to your desired return date.

If you exhaust all leave under this policy and are still unable to return to work, you must notify the Borough as soon as possible. Your situation will be reviewed to determine what rights and protections might exist under other Borough policies.

Rights upon Return from Leave

Upon return from family or medical leave, you will be returned to the position you held immediately prior to the leave, if the position is vacant. Certain exceptions exist for key employees, as defined by law. If the position is not vacant, you will be placed in an equivalent employment position with equivalent pay, benefits and other terms and conditions of employment.

The law provides that an employee on leave has no greater rights than the employee would have had if the employee had continued to work. Therefore, you may be affected by a layoff, termination or other job change if the action would have occurred had you remained actively at work.

Other Types of Leave

If you do not qualify for the types of leave described in this policy, the Borough may approve a personal leave of absence, depending on your circumstances. Except where mandated by law, we cannot guarantee that benefits will continue or that your position will remain open in your absence.

Definitions

“Spouse”—A husband or wife as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into. This definition also includes an individual in a same-sex or common law marriage that was entered into in a state that recognizes these marriages. An opposite-sex, same-sex or common law marriage that was entered into outside of any state will be recognized if the marriage is valid in the place where it was entered into and the marriage could have been entered into in at least one state.

“Parent”—A biological parent, adoptive parent, stepparent, foster parent or an individual who provides or provided day-to-day care or financial support to the child. Parent does not include a parent-in-law under this law.

“Child”—A biological, adopted or foster child, stepchild, legal ward or a child who is receiving day-to-day care or financial support from the employee and is under the age of 18. Child also includes a person 18 years of age or older who is incapable of self-care because of a mental or physical disability. For military family leave, the child does not have to be a minor (under the age of 18) and can be of any age.

- “Incapable of self-care”—The child requires active assistance or supervision to provide daily self-care in three or more “activities of daily living,” or “instrumental activities of daily living,” including adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing, eating or instrumental activities such as shopping, taking public transportation or maintaining a residence.
- “Physical or mental disability”—A physical or mental impairment that substantially limits one or more major life activities of the individual.

“Covered Service Member”—A 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.

“Covered Veteran”—An individual who is undergoing medical treatment, recuperation or therapy for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves), and 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.

“Next of Kin”—Used with respect to an individual, this means the nearest blood relative of that individual, other than the spouse, parent or child.

“Serious Health Condition”—Illness, injury, impairment, or physical or mental condition that involves:

Inpatient care in a hospital, hospice or residential medical care facility.

- A period of incapacity of more than three 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 within 30 days of the first day of incapacity, unless extenuating circumstances exist, by or under the orders of 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 a health care provider. The first (or only) visit must occur in person within seven days of the first day of incapacity.
- Any incapacity due to pregnancy or for prenatal care.
- Chronic conditions requiring periodic treatment by or under the supervision of a health care provider, which continue over an extended period of time and may cause an episodic rather than a continuing period of incapacity (for example, asthma, diabetes and epilepsy).

- Permanent or long-term conditions requiring supervision for which treatment may not be effective (for example, Alzheimer’s, a severe stroke or the terminal stages of a disease).
- Multiple treatments by or under the supervision of 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 calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy), severe arthritis (physical therapy) or kidney disease (dialysis).

“Serious Injury or Illness”—can be:

- In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank or rating.
- In the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran and is:
 - 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.
 - A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for servicemember family leave;
 - 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 would do so absent treatment; or 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 Caregivers.

“Qualifying Exigency”—includes:

- Short-notice deployment (seven days or less)
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation (up to 15 days)
- Post-deployment activities
- Parental care
- Additional activities agreed to by the Company and the employee

More Information

Please contact Human Resources for additional information.