

 <b>CRANBERRY</b> <small>TOWNSHIP</small>	<b>FAMILY AND MEDICAL LEAVE ACT POLICY</b>	<b>Date: 4-30-19</b>  <b>Supersedes Policy</b> <b>Dated: 8-11-15</b>
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<b>APPLICABLE TO FOLLOWING GROUPS:</b> <b>Non-Bargaining Unit Full-Time Regular Employees</b> <b>Non-Bargaining Unit Part-Time Regular Employees</b> <b>Police Bargaining Unit Employees</b>
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## **POLICY**

The federal Family & Medical Leave Act (FMLA) requires employers with 50 or more employees to provide eligible employees with unpaid leave. There are two types of leave available, including the basic 12-week leave entitlement (“Family and Medical Leave”), as well as the military family leave entitlements (“Military Family Leave”) described in this policy (cumulatively “FLMA Leave”).

The function of this policy is to provide employees with a general description of their FMLA rights and responsibilities. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

## **SCOPE**

This policy pertains to all Township employees with the exception of Sewer and Water Bargaining Unit and Teamsters Bargaining Unit employees. Specifically, all non-bargaining unit and Police bargaining unit employees are covered by this policy.

## **FAMILY AND MEDICAL LEAVE**

### ***QUALIFICATIONS FOR FAMILY AND MEDICAL LEAVE***

Under this policy, Cranberry Township will grant up to 12 weeks of Family Medical Leave during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy. The Township will designate Family and Medical Leave as paid leave under circumstances where an employee seeking Family and Medical Leave has an available paid time off balance (see “USE OF PAID LEAVE,” infra.)

To qualify for Family and Medical Leave under this policy, the employee must meet all of the following conditions:

- 1) The employee must have worked for the Township for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Employment before a break in service of 7 years or more will not be counted, unless the break in service was caused by the employee's active duty with the National Guard or reserve, or there was a written agreement that the Township intended to rehire the employee after the break in service. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week.
- 2) The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) shall be used to determine the number of hours worked by an employee.
- 3) The employee must be taking leave for one of the reasons listed below:
  - The birth of a child and in order to care for that child.
  - The placement of a child for adoption or foster care and to care for the newly placed child.
  - To care for a spouse, child or parent with a serious health condition. Any employee in a marriage recognized by the Commonwealth of Pennsylvania will have the ability to take Family and Medical Leave to care for a spouse, the child of a spouse or the parent of a spouse with a serious health condition.
  - The serious health condition (described below) of the employee that makes the employee unable to perform the functions of the employee's position.

An employee's entitlement to leave for the birth of a child or adoption or foster care shall expire at the end of the 12-month period beginning with the date of birth or placement.

For purposes of Family and Medical Leave, a "serious health condition" is defined as an illness, injury, impairment or physical or mental condition that requires in-patient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such in-patient care or a condition that requires continuing care by a health care provider. The term "incapacity" means inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom. The term "treatment" includes (but is not limited to) examinations to determine if a

serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes 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 a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of Family and Medical Leave.

#### *AMOUNT OF FAMILY AND MEDICAL LEAVE*

An eligible employee can take up to 12 weeks of Family and Medical Leave for reasons indicated under "Qualifications for Family and Medical Leave," in this document during any 12-month period. The Township will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the Township will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

If a married couple both work for the Township and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the couple may only take a combined total of 12 weeks of leave.

#### *PROCEDURE FOR REQUESTING FAMILY AND MEDICAL LEAVE*

An employee requesting Family and Medical Leave must provide verbal or written notice of the need for the leave to the Human Resources Department. Within 5 business days after the employee has provided this notice, the Human Resources Department will complete and provide the employee with the "**DOL Notice of Eligibility and Rights & Responsibilities.**"

When the need for leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for Family and Medical Leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day of the employee becoming aware of the need for leave. When the need for Family and Medical Leave is not foreseeable, the employee must comply with the Township's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

#### *CERTIFICATION FOR THE EMPLOYEE'S SERIOUS HEALTH CONDITION*

The Township will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of Family and Medical Leave. Medical certification will be provided using the **"DOL Certification of Health Care Provider for Employee's Serious Health Condition."**

The Township may, if it determines it to be necessary, directly contact the employee's health care provider for verification or clarification purposes using a health care professional or a Human Resources professional. The Township will not use the employee's direct supervisor for this contact. Before the Township makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In the event deficiencies remain and the employee does not provide the Township with authorization to clarify the certification with the healthcare provider and in compliance with the HIPAA Medical Privacy Rules, the Township may deny Family and Medical Leave.

The Township has the right to ask for a second opinion if it has reason to doubt the certification. The Township will pay for the employee to get a certification from a second doctor, which the Township will select. The Township may deny Family and Medical Leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the Township will require the opinion of a third doctor. The Township and the employee will mutually select the third doctor, and the Township will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and the benefits under the FMLA pending the second and/or third option.

#### *CERTIFICATION FOR THE FAMILY MEMBER'S SERIOUS HEALTH CONDITION*

The Township will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of Family and Medical Leave. Medical certification will be provided using the **"DOL Certification of Health Care Provider for Family Member's Serious Health Condition."**

The Township may directly contact the employee's family member's health care provider for verification or clarification purposes using a health care professional or Human Resources professional. The Township will not use the employee's direct supervisor for this contact. Before the Township makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In the event deficiencies remain and the employee does not provide the Township with authorization to clarify the certification with the healthcare provider and in compliance with the HIPAA Medical Privacy Rules,

the Township may deny Basic FMLA leave.

The Township has the right to ask for a second opinion if it has reason to doubt the certification. The Township will pay for the employee's family member to get a certification from a second doctor, which the Township will select. The Township may deny Family and Medical Leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the Township will require the opinion of a third doctor. The Township and the employee will mutually select the third doctor, and the Township will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

## **MILITARY LEAVE**

### ***QUALIFICATIONS FOR MILITARY LEAVE***

To qualify to take Military Leave under this policy, the employee must meet all of the following conditions:

- 1) The employee must have worked for the Township for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Employment before a break in service of 7 years or more will not be counted, unless the break in service was caused by the employee's active duty with the National Guard or reserve, or there was a written agreement that the Township intended to rehire the employee after the break in service. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week.
- 2) The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) shall be used to determine the number of hours worked by an employee.
- 3) The employee must be taking leave for one of the reasons listed below:
  - Qualifying exigency leave for families of service members when the covered military member is on covered active duty or has been notified of an impending call or order to covered active duty.

The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal

arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA). This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

- Military caregiver leave (also known as covered service member leave) to care for an ill or injured service member. Eligible employees may take FMLA leave to care for a covered family member who is:
  - A member of the armed forces (including a member of the National Guard or reserves) who is undergoing medical treatment, recuperation, or therapy; is other in outpatient status; or is otherwise on the temporary disability retired list for serious injury or illness; *or*
  - A veteran who is undergoing medical treatment, recuperation, or therapy for serious injury or illness and who was a member of the armed forces (including a member of the National Guard or reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, or therapy.

In the case of a covered current or former member of the armed forces (including a member of the National Guard or reserves), the term "serious injury or illness" means an injury or illness that was incurred in the line of duty while 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 while 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), the term "serious injury or illness" means an injury or illness that was incurred in the line of duty while 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 while 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; *or*

- 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 military caregiver leave; *or*
- 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.

#### *AMOUNT OF MILITARY LEAVE*

For qualifying exigency leave an employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on active duty may take up to 12 weeks of leave in a 12-month period for reasons related to or affected by the family member's call-up or service. Military caregiver leave may extend to up to 26 weeks in a single 12-month period for an employee to care for a spouse, son, daughter, parent or next of kin covered service member with a serious illness or injury incurred in the line of duty, on active duty. Parent, son or daughter includes any individual who stood in loco parentis to or for. Next of kin is defined as the closest blood relative of the injured or recovering service member. The Township will measure the 12-month period as a rolling 12-month period measured forward. Leave taken for other FMLA circumstances will be deducted from the total weeks available. If a married couple both work for the Township and each wishes to take leave to care for a covered injured or ill service member, the couple may only take a combined total of 12 weeks of leave for qualifying exigency leave and 26 weeks of leave for military caregiver leave.

#### *PROCEDURE FOR REQUESTING MILITARY LEAVE*

An employee requesting Military Leave must provide verbal or written notice of the need for the leave to the Human Resources Department. Within 5 business days after the employee has provided this notice, the Human Resources Department will complete and provide the employee with the ***"DOL Notice of Eligibility and Rights & Responsibilities."***

When the need for leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for Military Leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day of the employee becoming aware of the need for leave. When the need for

Military Leave is not foreseeable, the employee must comply with the Township's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

#### *CERTIFICATION OF QUALIFYING EXIGENCY FOR MILITARY FAMILY LEAVE*

The Township will require certification of the qualifying exigency for Military Leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the "**DOL Certification of Qualifying Exigency for Military Family Leave.**"

The Township will require the employee to provide a copy of the orders of his/her relative who is a service member or other military documentation by showing the service member's call to active duty and expected dates of active duty service. The Township may contact the appropriate Department of Defense unit to verify the service member's orders. The Township may seek certification from the employee of the reason for each qualifying exigency leave requested during the period of the relative's service.

The certification should include the approximate dates and purpose of the absence and, if for reduced or intermittent leave, an estimate of the frequency and duration of the qualifying exigency. If there is a third-party meeting(s) involved, the employee must provide contact information and an employer may contact the third party, but only for verification that the meeting is scheduled, or the employee's absence is required. The Township may ask the employee for reasonable documentation or a statement of the family relationship.

#### *CERTIFICATION FOR SERIOUS INJURY OR ILLNESS OF COVERED SERVICE MEMBER FOR MILITARY FAMILY LEAVE*

The Township will require certification for the serious injury or illness of the covered service member. The employee must respond to such request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the "**DOL Certification for Serious Injury or Illness of a Current Servicemember for Military Family Leave**" or the "**DOL Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave**"

The Township may require the health care provider to provide certain military-related determinations, provider contact information, and information about the type of medical practice and specialty, and whether the health care provider is an "authorized" health care provider. The Township may seek sufficient information to determine whether the injury or illness qualifies for military FMLA leave, as well as the expected duration and frequency of the need for the family member's caregiving role.

The employee will be required to provide information to show that the employee is eligible for the leave by showing a statement of the familial relationship, the service member's military status and where the service member is receiving medical care or if he or she is on a temporary disability retired list, as well as a description of the expected care and the time that will be needed.

## **FAMILY AND MEDICAL LEAVE AND MILITARY LEAVE**

### *DESIGNATION OF FMLA LEAVE*

Within five business days after the Township has sufficient information to determine whether the leave is being taken for an FMLA-qualifying reason, the Human Resources Department will complete and provide the employee with a written response to the employee's request for the FMLA leave using the **"DOL Designation Notice."**

### *RECERTIFICATION*

The Township may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the Township may request recertification for the serious health condition of the employee or of the employee's family member every six months in connection with an FMLA absence. The Township may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

### *INTENT TO RETURN TO WORK FROM FMLA LEAVE*

On a basis that does not discriminate against employees on FMLA Leave, the Township may require an employee on FMLA Leave to report periodically on his or her status and intent to return to work.

### *EMPLOYEE STATUS AND BENEFITS DURING LEAVE*

While an employee is on FMLA Leave, the Township 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.

If the employee chooses not to return to work for reasons other than a serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the Township will require the employee to reimburse the township the amount it paid for the

employee's health insurance premium during the leave period.

If the employee contributes to a voluntary disability plan through the Township, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums. If the employee does not continue these payments, the employer or outside vendor may discontinue coverage during the leave.

If the employee contributes to a voluntary Health Savings Account (HSA) through the Township, the Township will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, no contributions will be made to the employee's HSA account. Upon returning to work under this Policy, an employee may request the Township adjust his or her HSA withdrawals to ensure the full requested amount for the fiscal year is deducted.

#### *PAID LEAVE*

An employee who is taking Family and Medical Leave because of the employee's own serious health condition must first use all paid sick leave, followed by vacation or personal time. An employee who is taking leave for the adoption or foster care of a child or taking leave to care for a family member is not eligible to use sick time for such leave, and an employee must use vacation and personal paid time first. All paid leave will run concurrently with FMLA Leave. Once accrued paid leave has been exhausted, the remainder of any FMLA Leave shall be unpaid.

An employee who is using Military Leave for a qualifying exigency must use all paid vacation and personal leave prior to using unpaid leave. An employee using Military Leave for caregiver leave must also use all paid vacation and personal leave prior to being eligible for unpaid leave.

#### *BANKING OF VACATION TIME FOR SERIOUS HEALTH CONDITION FMLA LEAVE*

An employee who is taking Family and Medical Leave because of his or her own serious health condition may not want to utilize all of their accrued vacation time while on leave. Employees may have the option to bank up to forty (40) hours of vacation time. The employee must notify their Department Manager and the Human Resources Department in writing prior to the start of Family and Medical Leave, if reasonably possible. The Department Manager will notify the employee once the request has been approved. Employees that have received approval to bank up to forty (40) hours of vacation time, but have been paid their remaining sick, vacation and personal time, would have the remainder of their FMLA leave unpaid.

#### *RESTORATION OF EMPLOYMENT*

An employee who takes leave under this policy for his or her own serious health condition will be

asked to provide a fitness for duty (FFD) clearance from the health care provider prior to return to work.

Employees returning from FMLA Leave are generally entitled to be restored to their previous position or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment. An employee will not be reinstated if he/she otherwise would not have been employed at the time reinstatement is requested. The Township is not obligated to reinstate any employee whose job position is eliminated while on leave.

Employees designated by the Township as "Key Employees" may be denied restoration if necessary, to avoid substantial grievous economic injury to the Township's operations, in accordance with the express provisions of FMLA. These key employees are among the ten (10) percent most highly compensated salaried employees in the Township and will be notified of their status as key employees at the time they make their leave request. If it is anticipated that it may be necessary to deny restoration to a key employee at the end of his/her leave, the Township will immediately notify that employee.

#### *INTERMITTENT LEAVE OR A REDUCED WORK SCHEDULE*

The employee may take FMLA Leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year), or under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks for Military Leave for caregiver leave) over a 12-month period.

The Township may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family is foreseeable and for planned medical treatment including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the Township and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, or for Military Leave for caregiver leave, there must be a medical need for the leave that can best be accommodated through an intermittent or reduced leave schedule. If the employee needs leave intermittently or on a reduced leave schedule, the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the Township's operations.

The Township will require certification for intermittent FMLA or a reduced work schedule pursuant to the certification requirements found in the Family and Medical Leave and Military Leave sections, above.

#### *NOTIFICATION OF RIGHTS*

The Township will not interfere with, restrain or deny the exercise of any right provided under the FMLA. The Township will not discharge or discriminate against any person for opposing any practice made unlawful by FMLA nor will it discriminate against or discharge any person because of involvement in any proceeding under or related to the FMLA. The Secretary of Labor is authorized to investigate and attempt to resolve complaints and violations and may bring an action in any federal or state court against an employer for violating FMLA. FMLA will be enforced by the Department of Labor Wage and Hour Division. An eligible employee may also bring a civil suit for violations of FMLA. It should be noted that FMLA does not affect any federal or state law prohibiting discrimination, nor does it supersede any state or local law which provides for greater family or medical leave benefits. FMLA does not affect an employer's obligation to provide greater leave benefits than is required under a collective bargaining agreement or employee benefit plan or contract. No rights provided for under FMLA may be diminished or waived by agreement, plan or contract. A copy of your rights under FMLA is posted within the Township offices. Questions concerning the FMLA or your leave benefits should be directed to the Human Resources Department.

#### *INTERPRETATION AND CONTROL*

Department Heads, Managers, and Supervisors are responsible for notifying the Human Resources Department of any employee circumstance which may be covered by this policy.

The Human Resources Department is responsible for the interpretation and control of this policy in compliance with the FMLA and its relevant regulations.

The Board of Township Supervisors, operating through the Township Manager will have the authority to establish standards of administration as long as such standards are consistent with the intent and purpose of the FMLA.