Cumberland Town Council

Ordinance 2019-18

Amending Family Medical Leave Act Policy

Whereas, the Town of Cumberland Employee Handbook, Section 6.06, sets for the terms of the Town’s Family Medical Leave Act (“FMLA”) policy; and

Whereas, the FMLA regulations clarify the definition of “eligible employees” subject to the FMLA; and

Whereas, the Town Council finds it is in the best interest of the Town, and its citizens to comply with the regulations and promulgations of the FMLA.

Therefore, it is ordained, that section 6.06 of the Employee Handbook shall be amended to define “eligible employees” subject to the FMLA. This amended section shall read in accordance with Exhibit A.

It is further ordained that this ordinance shall become effective upon adoption.

It is further ordained that any other provision of the Employee Handbook which is not specifically amended by this section shall remain in full force and effect.
Cumberland Town Council:

Joe Siefker, President

Anna Pea, Vice President

Nicole Bell, Member

Aaron Cutshaw, Member

Brian Gritter, Member

Attest:

Erica Salmon, Clerk-Treasurer
Exhibit A

“6.06 LEAVE UNDER THE FAMILY MEDICAL LEAVE ACT (FMLA)

6.06.1 FMLA Leave: Federal law grants to eligible employees the right to take up to 12 weeks of unpaid leave during a 12-month period, if the employee qualifies, under the Family Medical Leave Act (FMLA) for a serious health condition. The Town recognizes an eligible employee’s rights and obligations under FMLA. Eligible employees of the Town are eligible for up to four weeks of paid FMLA and up to eight weeks of unpaid FMLA leave per year.

6.06.2 Serious Health Condition: The Department of Labor has defined a “serious health condition” as involving any illness, injury, or physical or mental condition that involves:

- In-patient care in a medical facility; or
- Incapacity requiring three days’ absence from work, school, or other daily activities; and, supervision or continuing treatment by a health care provider; or
- A chronic, long-term, or incurable condition which is under the care, supervision, or treatment of a health care provider and if untreated would result in at least three days’ incapacity from work or other daily activities.

6.06.3 Events for which Leave is Available: The Town allows up to 12 work weeks of unpaid leave during any 12 month period to an eligible employee who requests the leave:

- To care for a newborn child, or a child who is newly placed in the employee’s custody through adoption or foster care;
- To care for a spouse, child, stepchild, foster child or parent (but not a parent-in-law) who has a “serious health condition,” or
- Because the employee has a “serious health condition,” that makes the employee unable to perform his/her job.

6.06.3.1. The Town allows up to twenty-six (26) work weeks of leave during any twelve-month period to an eligible employee who requests the leave to be a military caregiver.
6.06.4 Eligibility Requirements: The twelve-month period starts the first day that the employee takes the leave. The provisions of this policy shall not apply to any employee of the Town who has been employed for less than 12 months or who has worked less than 1,250 hours during the preceding 12 month period. The provisions of this policy shall not apply to ineligible employees as defined by the FMLA, including but not limited to the Deputy Clerk-Treasurer of the Town.

6.06.5 Notice Required: An employee who seeks to obtain leave pursuant to this policy shall give at least 30 calendar days’ notice of the leave, if possible. He or she shall also schedule medical treatment to cause as little disruption to his or her employment as possible.

6.06.6 Compensation for FMLA Leave: Employees will be required to first use any vacation and sick days before taking unpaid family leave. An eligible employee shall take any accrued sick leave or vacation leave prior to taking unpaid leave under the FMLA. Such paid leave will be counted towards the employee’s 12 work weeks of FMLA leave granted per leave year. For example, if an employee has one week of vacation leave that can be applied toward the 12 work weeks leave, then only 11 work weeks unpaid leave needs to be provided.

6.06.7 Intermittent or Reduced Hours Leave: Under normal circumstances, any leave obtained pursuant to this policy shall be taken in consecutive days unless the Town Manager or Chief of Police and the employee agree to another arrangement. In the case of leave taken to care for a seriously ill spouse, child, or parent, or due to the employee’s own serious health condition, an employee may take leave intermittently (i.e., periodically) or on a reduced hours schedule (i.e., reduced number of working hours per day or per week) only when such leave is medically necessary, as certified by the employee’s or family member’s health-care provider. Otherwise, such leave is not permitted except at the sole discretion of the Town. An employee who takes leave intermittently or on a reduced leave schedule may be temporarily transferred to another position for which the employee is qualified to better accommodate that leave.

When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, the employee may take such leave for any period of a day, but the minimum period of leave is one hour. However, the employee will not be charged
FMLA leave for periods of time during which the employee is working. In accounting for FMLA leave taken, the Town will charge the time taken on such leave based upon the actual work week of the employee. For example, if the employee has a 40-hour 5-day regular work week, and takes off one day (eight hours), the employee will be charged with using one-fifth (1/5th) of a week. If the employee works a part-time 30-hour week and takes off 10 hours of FMLA leave, the employee will be charged with using one-third (1/3rd) of a week. If the employee’s work week varies from week to week to such an extent that the Town is unable to determine with any certainty how many hours the employee would otherwise have worked (but for taking the FMLA leave), the Town will use a weekly average of hours scheduled to work over a 12 month period prior to the beginning of the leave period (including any hours for which the employee took leave of any type) in order to calculate the employee’s leave entitlement. If the employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason that limits the employee’s ability to work overtime, the hours which the employee would have been required to work will be counted against the FMLA entitlement. For example, if the employee would normally be required to work 48 hours in a particular week but is only able to work 40 hours, the employee would be charged with using one-sixth (1/6th) of a week of FMLA leave. Voluntary overtime will not be counted against the FMLA entitlement.

6.06.8 Health Care Provider Authorization: In cases of leave to be taken to care for a seriously ill family member or due to the employee’s own serious health condition, an eligible employee must provide the Town with a completed and signed health care provider certification indicating that the employee requires FMLA leave. This certification must be returned to the Town within 15 days after the employee gives notice of his or her intent to take FMLA leave, and must contain the following information:

- The date on which the eligible event commenced.
- The probable duration of the condition.
- The treatment regimen prescribed.
- Any appropriate medical facts within the health-care provider’s knowledge regarding the condition.
- If applicable, a statement that the employee is needed to provide care for his or her spouse, child, or parent and an estimated duration of such need.
• If applicable, a statement regarding the medical necessity of intermittent or reduced hours schedule leaves.

Failure to return this certification in a timely manner may result in delays in securing authorization for leave, and failure to return the certification at all will preclude the employee from taking leave.

The Town may also require, at its own expense, a second and third health care provider opinion if there is a question as to the validity of the certification provided by the employee.

An eligible employee also may be asked to furnish the Town with subsequent health care provider certifications on a reasonable basis during the employee’s leave period. An eligible employee’s failure to furnish subsequent certifications may result in termination of the employee’s right to leave.

An eligible employee on FMLA leave must submit to the Town a medical release (i.e., fitness-for-duty certification) indicating that the employee is able to return to work. Failure to submit such a release will preclude the employee from being restored to his or her employment with the Town.

6.06.9 Job and Benefits Security: An eligible employee who takes leave under the FMLA and who returns to work before his or her annual FMLA entitlement has expired, will be restored to the position he or she held when the leave commenced, or to an otherwise equivalent position with respect to pay, benefits, and other terms and condition of employment, unless the employee would no longer have been employed in such a position had the employee not taken such leave. Additionally, any unused employment benefits that had accrued to an eligible employee prior to the commencement of leave will be restored upon return from FMLA leave.

6.06.10 Continuation of Group Health Plan Coverage: Group health plan coverage will be maintained by the Town during an eligible employee’s period of FMLA leave to the extent and under the same circumstances as it ordinarily is furnished to that employee. The employee’s portion of premium payments should be paid by the employee to the Clerk-Treasurer’s office on the 1st and 15th of each month. The Clerk-Treasurer’s office will notify eligible employees concerning the amount of each premium payment. Failure to pay such premiums during leave will
result in the loss of health coverage. An eligible employee who fails to return to work after the expiration of the FMLA leave period for reasons that are not beyond his or her control will be expected to reimburse the Town for health-care premiums paid by the Town during the leave period. Insurance coverage provided as required herein during the course of a leave is not to be counted as COBRA coverage.

6.06.11 Non-Discrimination/Non-Retaliation Policy Statement: The Town will not:

(1) interfere with, restrain, or deny the exercise of any right provided under the FMLA;
(2) discharge or discriminate against any person for opposing any practice made unlawful by the FMLA; or
(3) discharge or discriminate against any person for his or her involvement in any proceeding under or relating to the FMLA.”