

MEMORANDUM

TO: Council President Saponaro and Members of Council
FROM: Diane Wolgamuth, Director of Administration
DATE: February 8, 2019
RE: **Employment Policies – Family and Medical Leave Act (Agenda Item)**

Finance Director Ron Wynne and I have been working with the Law Dept. to review and update the Village's employment policies. Although most of these policies do not require approval and adoption by Council, the State Auditor advises that it is best practice to do so, and we agree, so a variety of policies will be brought to Council over the next several months.

The first policy before Council is the Family and Medical Leave Act Policy which has been revised as follows:

- to reflect a rolling 12-month eligibility period;
- to provide for employee designation of the order of use of accrued paid leave; and
- to clarify the Village's right to designate FMLA leave for absences longer than three days, if the absence qualifies for FMLA leave, whether or not the employee requests such leave.

A red-lined copy of the FMLA Policy is attached as Exhibit A to the proposed Ordinance adopting this revised policy and repealing the prior Policy, adopted in 2009. This red-lined version will be replaced with a clean copy prior to final adoption of the Ordinance.

cc: Mayor Brenda T. Bodnar
Department Heads
Council Clerk

**AN EMERGENCY ORDINANCE AMENDING
CODIFIED ORDINANCE SECTION 153.11
PERTAINING TO FAMILY AND MEDICAL LEAVE**

WHEREAS, the Family and Medical Leave Act (29 CFR §825), established in 1993 and amended in 2009, allows employees of covered employers to take unpaid leave for certain family and medical reasons; and

WHEREAS, in 2009, Mayfield Village adopted Ordinance 2009-13, amending its Family and Medical Leave Act Policy to comply with the 2009 Federal amendments which expanded certain types of military leave; and

WHEREAS, it has been deemed in the best interest and for the health, safety and welfare of Mayfield Village to amend and re-issue the Village's Family and Medical Leave Act Policy, repealing and replacing Ordinance 2009-13.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF MAYFIELD VILLAGE, OHIO, THAT:

SECTION 1. Section 153.11 of the Village's Codified Ordinances pertaining to the Family and Medical Leave Act Policy is hereby and herein adopted to read as set forth in Exhibit "A" attached hereto and incorporated herein by reference.

SECTION 2. Ordinance Number 2009-13 is hereby and herein repealed in its entirety, effective immediately.

SECTION 3. The Clerk of Council is hereby authorized and directed to forward a certified copy of this Ordinance to the Codifier of Mayfield Village.

SECTION 4. The Council finds and determines that all formal actions of this Council relating to the adoption of this Ordinance have been taken at open meetings of this Council; and that deliberations of this Council and of its committees, resulting in such formal action, took place in meetings open to the public, in compliance with all statutory requirements including the requirements of Section 121.22 of the Ohio Revised Code.

SECTION 5. This Ordinance is hereby declared to be an emergency measure immediately necessary for the health, safety and welfare of the residents of Mayfield Village, Ohio, for the reason that it enables the Village to implement a revised Family and Medical Leave

Act Policy for Mayfield Village employees to comply with federal law and the Code of Federal Regulations. It shall, therefore, take effect immediately upon the passage by the affirmative vote of not less than five (5) members elected to Council and approval by the Mayor or otherwise at the earliest time allowed by law.

JOSEPH M. SAPONARO
Council President

First Reading: _____, 2019

Second Reading: _____, 2019

Third Reading: _____, 2019

PASSED: _____, 2019

BRENDA T. BODNAR, Mayor

APPROVED AS TO FORM:

ATTEST:

ANTHONY J. COYNE, ESQ.,
Director of Law

MARY E. BETSA,
Clerk of Council

EXHIBIT A
FAMILY AND MEDICAL LEAVE ACT (FMLA) POLICY

This policy establishes the rights and obligations of the Village and its employees with regard to leave necessary for medical care of employees and their families. This FMLA policy will serve as a supplement to and clarification of leave provided by existing ordinances and/or labor and employment contracts.

(A) DEFINITIONS:

1. **ACTIVE DUTY.** The term “active duty” means a military operation that results in call or order to, or retention on, active duty of members of the uniformed services in certain situations, or any other provision of law during a war or during a national emergency declared by the President or Congress.
2. **AUTHENTICATION.** The term “authentication” means providing the health care provider with a copy of a certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document.
3. **CLARIFICATION.** The term “clarification” means contacting a health care provider to understand the handwriting on a medical certification or to understand the meaning of a response.
4. **CONTINGENCY OPERATION.** The term “contingency operation” means an operation designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations; or hostilities against an enemy of the United States or against an opposing military force, or results in a call or order to, or retention on, active duty of members of the uniformed services in certain situations, or any other provision of law during a war or during a national emergency declared by the President or Congress.
5. **COVERED SERVICEMEMBER.** The term “covered servicemember” means 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 otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty on active duty.
6. **EQUIVALENT POSITION.** The term “equivalent position” means a position that is virtually identical to an employee’s former position in terms of pay, benefits and working conditions, including privileges, prerequisites and status, and involves the same or substantially similar duties and responsibilities which entail substantially equivalent skill, effort, responsibility, and authority.
7. **KEY EMPLOYEE.** The term “key employee” means a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the Village within 75 miles of the employee’s worksite.
8. **NEXT OF KIN.** The term “next of kin,” used with respect to an individual, generally means the nearest blood relative of that individual.

9. **OUTPATIENT STATUS.** The term “outpatient status,” with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to (A) a military medical treatment facility as an outpatient; or (B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
10. **PARENT.** The term “parent” means either a biological parent or a person standing in *loco parentis*.
11. **PARENT OF A COVERED SERVICEMEMBER.** The term “parent of a covered servicemember” means a covered servicemember’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents “in law.”
12. **SERIOUS HEALTH CONDITION.** The term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three (3) consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.
13. **SERIOUS INJURY OR ILLNESS.** The term “serious injury or illness,” in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.
14. **SON OR DAUGHTER.** The term “son or daughter” means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*, who is: under 18 years of age; or 18 years of age or older and incapable of self-care because of a mental or physical disability.
15. **SON OR DAUGHTER OF A COVERED SERVICEMEMBER.** The term “son or daughter of a covered servicemember” means the covered servicemember’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.
16. **SPOUSE.** The term “spouse” means a husband or wife, as the case may be.

(B) QUALIFICATION FOR LEAVE: Employees must have been employed for at least 12 months and have worked at least 1,250 hours in the year preceding the date the employee seeks to start FMLA leave.

(C) AVAILABLE LEAVE: Eligible employees are entitled to take up to 12 weeks of leave during the ~~a 12 month calendar year period~~ 12-month period for the purposes set forth in below subsections (C)(1)-(5), and up to 26 weeks of leave during a single 12-month period for the purposes set forth in

below subsections (C)(6):

1. Pregnancy or the birth of the employee's child and in order to care for the child;
2. The placement of a child with the employee for adoption or foster care;
3. To care for a spouse, child, or parent who has a serious health condition;
4. A serious health condition that renders the employee incapable of performing the functions of his or her job;
5. Because of any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is a covered military member on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation; and
6. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

Under this Policy, the 12 month period is the 12-month period measured forward from the first date an employee takes leave for the purposes set forth in Subsections (C)(1)-(6). The next 12-month period would begin the first time FMLA leave is taken after completion of the prior 12-month period (for example, if an FMLA leave begins on November 6th, the 12-month period runs through November 5th of the following year).

Eligible employees, including a spouse, son, daughter, parent, or next of kin of a member of the Armed Forces, including the National Guard or Reserves, are entitled to take up to 26 weeks of FMLA leave in a single 12-month period to care for that covered servicemember with a serious illness or injury. This leave is only available during a single 12-month period beginning on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ending 12 months after that date. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during this single 12-month period, the remaining part of the employee's 26 workweeks of leave entitlement to care for the covered servicemember is forfeited. This military leave entitlement is to be applied on a per-covered-servicemember, per-injury basis, except that no more than 26 workweeks of leave may be taken within any single 12-month period.

In the case of leave that qualifies as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition during the single 12-month period, the Village must designate such leave as leave to care for a covered servicemember in the first instance.

(D) APPLICATION & NOTICE OF LEAVE: All requests for FMLA leave should be made in writing to the employee's department head or to the Mayor where making the request to the employee's department head is impracticable. The amount of sick leave and vacation time available should be confirmed with the Finance Department before application for FMLA leave is made. In all cases an employee requesting FMLA leave must complete an application for FMLA leave sufficient to make the Village aware that the employee needs FMLA-qualifying leave and return it to their immediate Supervisor and the Finance Department. The completed application must state the reason for the leave, the anticipated duration of the leave, and anticipate the starting and ending dates of the leave. Although notice need only be given one time, the employee must advise the Village as soon as practicable if dates of scheduled leave change, are extended, or were initially unknown. The employee must also provide the Village with notice of any changes in contact information that occur during FMLA leave. Notice may be given by the employee's spokesperson if the employee is unable to do so personally.

If the necessity of FMLA leave is foreseeable, an employee intending to take FMLA leave because of a reason set forth in Section (C)(1)-(4) or FMLA leave for planned medical treatment under Section (C)(6) must submit an application for leave at least thirty (30) days before the leave is to begin. When the necessity for FMLA leave under Section (C)(5) is foreseeable, whether because the spouse, or a son, daughter, or parent, of the employee is on active duty, or because of notification of an impending call or order to active duty in support of a contingency operation, the employee shall provide such notice to the Village as is reasonable and practicable. When the need for FMLA leave is foreseeable at least 30 days in advance and an employee fails to give timely advance notice with no reasonable excuse, the Village may delay FMLA coverage until 30 days after the date the employee provides notice. If the foreseeable leave is based upon a serious health condition, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the Village's Operations. If leave begins within thirty (30) days, an employee must give notice to his/ her immediate supervisor and the Finance Department before the leave starts.

If the necessity of FMLA leave under Section C(1)-(4) or FMLA leave for planned medical treatment under Section (C)(6) is not foreseeable and thirty (30) days notice is not practicable, notice must be given as soon as practicable. If the circumstances necessitate that the employee take fewer than thirty (30) days of leave, the employee is required to provide such notice to the Village as soon as practicable.

While an employee seeking leave for the first time for a FMLA-qualifying reason need not expressly assert rights under the FMLA, when an employee seeks leave due to a qualifying reason for which the Village has previously provided the employee FMLA-protected leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave.

(E) USE OF ACCRUED PAID LEAVE: An employee will be required to concurrently use any of the employee's accrued paid leave along with FMLA leave in any situation covered by the FMLA and where the employee still has paid leave available. The employee will have seven (7) days from the Employer's designation of FMLA time to inform the Finance Director of his/her determination to use the type or order of accrued paid leave. In the event the employee does not designate the order of accrued paid leave to the Finance Director within seven days, then ~~Accrued~~ paid leave shall be used in the following order: (1) sick leave; (2) vacation; (3) holiday; and (4) all personal leave. Shift trades cannot be used in conjunction with FMLA. An employee is required to explain the reasons for the needed leave so as to allow the Village to determine that the leave qualifies as FMLA leave. If the employee fails to explain the reasons, leave may be denied. The first day of leave shall begin the running of an employee's FMLA entitlement. Further, any additional leave taken on an intermittent basis requested after such time as the employee has been granted FMLA leave shall also be counted towards the employee's FMLA entitlement.

(F) INTERMITTENT LEAVE OR REDUCED LEAVE SCHEDULE: Under certain circumstances, FMLA leave may be taken intermittently (in separate blocks of time due to a single qualifying reason) or on a reduced leave schedule (a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday, for a period of time). For intermittent leave or leave on a reduced leave schedule taken pursuant to Section (C)(3), (4) or (6), there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. An employee may take intermittent leave or leave on a reduced leave schedule pursuant to Section (C)(1) or (2) only

if the Village agrees. Leave taken pursuant to Section (C)(5) may be taken on an intermittent or reduced leave schedule basis.

If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on planned medical treatment for the employee, a family member, or a covered servicemember, the Village may require the employee to transfer temporarily, during the period that the intermittent or reduced leave schedule is required, to an available alternative position having equivalent pay and benefits for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.

(G) SPOUSES EMPLOYED BY THE VILLAGE: In any case in which a husband and wife entitled to FMLA leave are employed by the Village, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period, if such leave is taken for the birth, care, or the placement for adoption or foster care of a son or daughter pursuant to Section (C)(1) or (2), or to care for a sick parent under Section (C)(3). The aggregate number of workweeks of leave to which both that husband and wife may be entitled may be limited to 26 workweeks during the single 12-month period described in subsection (C) if the leave is family servicemember leave or a combination of family servicemember leave and another type of leave described in Section (C)(1)-(4).

(H) MEDICAL CERTIFICATION OF LEAVE: An application for FMLA leave pursuant to Section (C)(1), (2), (3), (4), or (6) must also be accompanied by a medical certification statement (provided by the Village) completed by the applicable health care provider. In the case of foreseen leave, the Village requests that an employee furnish a complete and sufficient certification at the time the employee gives notice of the need for leave or within five (5) business days thereafter, or, in the case of unforeseen leave, within five (5) business days after the leave commences. The employee must provide the requested certification to the Village within fifteen 15 calendar days after the Village's request unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. Where the employee's (or the employee's family member's) health care provider is providing the certification, it is the employee's responsibility to furnish the health care provider with any necessary authorization from the employee or the employee's family member in order for the health care provider to release a complete and sufficient certification to the Village to support the employee's FMLA request. The certification must state the date on which the serious health condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition. If the employee is needed to care for a spouse, child, or parent with a serious health condition, the certification must so state along with an estimate of the amount of time the employee will be needed. If the employee has a serious health condition, the certification must state why the employee cannot perform the essential functions of his or her job.

The Village must advise an employee whenever the Village finds a certification incomplete or insufficient, and must state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if one or more of the applicable entries have not been completed. A certification is considered insufficient if the information provided is vague, ambiguous, or non-responsive. The employee has seven (7) calendar days to cure any such deficiency unless not practicable under the particular circumstances despite the employee's diligent good faith efforts. If such deficiencies are not cured in the resubmitted certification, the Village may deny the taking of FMLA leave. A certification that is not returned to the Village constitutes a failure to provide certification.

Where the employee's need for leave due to the employee's own serious health condition, or the

serious health condition of the employee's covered family member, lasts beyond a single leave year, the Village may require the employee to provide a new medical certification each subsequent leave year.

If an employee submits a complete and sufficient certification signed by the health care provider, the Village, using a health care provider, a human resources professional, a leave administrator, or a management official, may contact the health care provider for purposes of clarification and authentication of the medical certification after the Village has given the employee an opportunity to cure any deficiencies. However, the Village is prohibited from asking health care providers for additional information beyond that required by the certification form. If an employee chooses not to provide the Village with authorization allowing the Village to clarify the certification with the health care provider, and does not otherwise clarify the certification, the Village may deny the taking of FMLA leave if the certification is unclear. The employee's direct supervisor is prohibited from contacting the employee's health care provider.

Where the Village has reason to doubt the validity of a medical certification, the Village may require the employee to obtain a second opinion from a health care provider designated by the Village at the Village's expense. However, the selected health care provider generally should not be located outside the employee's normal commuting distance, and cannot be employed by the Village on a regular basis. Pending receipt of the medical opinion, the employee is provisionally entitled to FMLA benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave will not be designated as FMLA leave and will be treated as paid or unpaid leave under the Village's applicable leave policies. Where the opinions of the employee's and the Village's designated health care providers differ, the Village may similarly require, at the Village's expense, the employee to obtain certification from a third health care provider designated or approved jointly by the Village and the employee. This third certification is final and binding. The Village is required to provide the employee with a copy of the second and third medical opinions, where applicable, within five (5) business days upon the employee's request unless extenuating circumstances prevent such action. The Village must reimburse an employee or employee family member for any reasonable "out of pocket" travel expenses incurred in obtaining second and third medical opinions.

For purposes of leave taken to care for a covered servicemember, any one of the following health care providers may complete such a certification:

1. A United States Department of Defense ("DOD") health care provider;
2. A United States Department of Veterans Affairs ("VA") health care provider;
3. A DOD TRICARE network authorized private health care provider; or
4. A DOD non-network TRICARE authorized private health care provider.

If the authorized health care provider is unable to make the relevant military-related determinations, the authorized health care provider may rely on determinations from an authorized DOD representative. While the Village may require an employee to provide confirmation of the covered family relationship to the seriously injured/ill servicemember and may seek authentication and/or clarification of the certification for leave taken pursuant to Section (C)(6), the Village is prohibited from obtaining a second or third opinion or recertification for such leave.

The Village must accept "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member, regardless of whether the employee is named, to join an injured or ill servicemember at his or her bedside as sufficient certification for

the duration of time specified in the ITO or ITA. During the specified time period, an eligible employee may take leave to care for the covered servicemember in either a continuous block of time or on an intermittent basis, and the employee may not be required to provide any additional or separate certification that such intermittent leave is medically necessary. While the Village may seek authentication and clarification of the ITO or ITA, the Village is prohibited from utilizing the second or third opinion or recertification process during the period of time specified by the ITO or ITA.

(I) CERTIFICATION OF LEAVE FOR QUALIFYING EXIGENCY: A request for leave taken pursuant to Section (C)(5) must be supported by a complete and sufficient certification. The first time an employee requests leave pursuant to Section (C)(5), the Village may require the employee to provide a copy of the covered servicemember's active duty orders or other documentation issued by the military indicating that the covered servicemember is on active duty or call to active duty status in support of a contingency operation, as well as the dates of the covered servicemember's active duty service. If the qualifying exigency involves meeting with a third party, the Village may contact that third party, without the employee's permission, for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified third party. The Village may similarly contact an appropriate unit of the Department of Defense to request verification that a covered military member is on active duty or call to active duty status. When making such contact, the Village is prohibited from requesting any additional information.

(J) RECERTIFICATION OF LEAVE: Generally, the Village may request recertification for leave taken pursuant to Section (C) (1), (2), (3)-(4) no more often than every thirty (30) days in connection with an employee's absence. However, if the minimum duration of the period of incapacity specified on the certification is more than thirty (30) days, the Village may not request recertification until that minimum duration has passed, except the employee must submit a recertification to the Village in less than 30 days where:

1. The employee requests an extension of leave;
2. The circumstances described by the previous certification have changed significantly; or
3. The Village receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

The employee must provide the requested recertification to the Village within sixteen (16) calendar days after the Village's request unless it is not practicable to do so despite the employee's diligent, good faith efforts. Any such recertification shall be at the employee's expense. The Village may ask for the same information when obtaining recertification as that permitted for the original certification, and the Village can provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such pattern.

(K) FAILURE TO PROVIDE CERTIFICATION: In the case of foreseeable leave, if an employee fails to provide certification in a timely manner, then the Village may deny FMLA coverage until the required certification is provided. In the case of unforeseeable leave, the Village may deny FMLA coverage for the requested leave if the employee fails to provide a certification within 15 calendar days from receipt of the request for certification unless not practicable due to extenuating circumstances.

If an employee fails to provide recertification within 16 calendar days after the Village request or

as soon as practicable under the particular facts and circumstances, the Village may deny continuation of FMLA leave protections until the employee produces a sufficient recertification. If the employee never produces the recertification, the leave is not FMLA leave.

(L) NOTICE OF ELIGIBILITY: When an employee requests FMLA leave, or when the Village acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the Village must notify the employee either orally or in writing, and within 5 business days absent extenuating circumstances, of whether the employee is eligible to take FMLA leave. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible. Employee eligibility is determined, and notice must be provided, at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable 12-month period.

If, at the time an employee provides notice of a subsequent need for FMLA leave during the applicable 12-month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. However, if the employee's eligibility status has changed, the Village must notify the employee of the change in eligibility status within five business days, absent extenuating circumstances. Such notice may be accomplished electronically.

(M) NOTICE OF RIGHTS & RESPONSIBILITIES: Similar to the notice of eligibility, the Village must also provide written notice of the specific expectations and obligations of the employee regarding leave, explaining any consequences of a failure to meet these obligations. The notice should be mailed to the employee's address of record if leave has already begun. If the specific information provided by the notice of rights and responsibilities changes, the Village must, within five business days of receipt of the employee's first notice of need for leave subsequent to any change, provide written notice referencing the prior notice and setting forth any of the information in the notice of rights and responsibilities that has changed.

(N) NOTICE OF DESIGNATION: The Village is responsible for designating leave as FMLA-qualifying. Once the Village has enough information to determine whether the leave is or is not being taken for a FMLA-qualifying reason, the Village must notify the employee whether the leave will be designated and will be counted as FMLA leave within five business days absent extenuating circumstances. The Village must provide written notice of any changes in the information contained in the designation within five business days of receipt of the employee's first notice of need for leave subsequent to any change. If paid leave is required to be substituted for unpaid FMLA leave, or paid leave taken under an existing leave plan is required to be counted as FMLA leave, the Village must inform the employee of this designation in writing at the time of designating the FMLA leave.

The Village must also notify the employee of the amount of leave counted against the employee's FMLA leave entitlement. If the amount of leave needed is known at the time the Village designates the leave as FMLA-qualifying, the Village must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice. If the amount of leave needed is not known, then the Village must provide notice of the amount of leave counted against the employee's FMLA leave entitlement upon the request by the employee, but no more often than once in a 30-day period and only if leave was taken in that period. The notice of the amount of leave counted against the employee's FMLA entitlement may be either in writing or oral and later confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday). Such written notice may be

in any form, including a notation on the employee's pay stub.

The Village retains the right to designate FMLA leave for an employee who is absent for more than three (3) consecutive days and where such absence would otherwise qualify for FMLA leave whether or not the employee requests FMLA leave. Such designations will be based upon information and knowledge acquired by the Village.

(O) BENEFITS/ COVERAGE DURING LEAVE: During any period of leave under this policy, an employee's group health insurance coverage will be maintained on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period. The Village will continue to pay its portion of the insurance premium and to continue health coverage, the employee must continue to make all contributions that he or she made to the plan before taking leave. Failure of the employee to pay his or her share of the health insurance premium may result in loss of coverage. If the employee fails to return to work after the expiration of the leave so as to preclude the Village from recovering its share of health benefit premium payments made on the employee's behalf during a period of unpaid FMLA leave, the employee will be required to reimburse the Village for payment of health insurance premiums during the family leave, unless the reason the employee fails to return is the presence of a serious health condition of the employee or the employee's family or of a covered servicemember's serious injury or illness which prevents the employee from performing his or her job, or to other circumstances beyond the employee's control. The employee must provide the Village with a medical certification of the presence of such serious health condition of the employee or the employee's family member, or the covered service member's serious injury or illness, within 30 days of the Village's request for such certification. If the employee does not provide such certification within 30 days, or the reason for not returning to work does not meet the test of other circumstances beyond the employee's control, the Village may recover 100% of the health benefit premiums it paid during the period of unpaid FMLA leave.

An employee's entitlement to benefits other than group health benefits during a period of FMLA leave (vacation and sick leave) is to be determined by Village policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate).

(P) EXPIRATION OF LEAVE: An employee's entitlement to FMLA leave for a birth or placement for adoption or foster care expires at the end of the twelve (12)-month period beginning on the date of the birth or placement unless Ohio law allows leave to be taken for a longer period.

(Q) RETURN FROM LEAVE: An employee who returns to work for at least 30 calendar days is considered to have "returned" from FMLA leave. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned from leave.

An employee must complete a notice of intention to return (provided by the Village) from FMLA leave before the employee can be returned to active status unless the FMLA leave was intermittent leave. For employees whose leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job, the notice of intention to return from leave must be signed by the employee's health care provider. A health care provider employed by the Village may contact the employee's health care provider, with the employee's permission, for purposes of clarification of the employee's fitness to return to work. The clarification may be requested only for the serious health condition for which FMLA leave was taken. The Village may, at their own expense, require the employee to obtain a second

opinion from an independent health care provider regarding the employee's fitness to return to work with regard to the particular health condition that caused the employee's need for FMLA leave. If the opinions differ, again at the Village's expense, a third opinion may be required. If the employee wishes to return to work prior to the expiration or at the expiration of the FMLA leave of absence, notification must be given to the employee's immediate supervisor, at least five (5) working days prior to the employee's planned return.

(R) RESTORATION TO EMPLOYMENT: An employee returning from FMLA leave, with the exception of those employees designated as highly compensated "key employees," is entitled to be restored to the employee's position or to a position with equivalent pay, benefits, and other terms and conditions of employment. When an employee taking leave intermittently or on a reduced leave schedule who has been transferred to an alternative position and who no longer needs to continue such leave and is able to return to full-time work, the employee must be placed in the same or equivalent job as the job s/he left when the leave commenced. The Village cannot guarantee that an employee will be returned to his or her original job.

In any event, if the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. If an employee is no longer qualified for the position as a result of the leave, the employee shall be given a reasonable opportunity to fulfill those conditions upon return to work. To deny restoration to employment, the Village must be able to show that the employee would not otherwise have been employed at the time reinstatement is requested.

As a condition of restoration, an employee whose FMLA leave was occasioned by the employee's own serious health condition that made the employee unable to perform the employee's job must obtain and, at the time the employee seeks restoration to employment, present a complete and sufficient fitness-for-duty certification ("fitness certification") from the employee's health care provider that the employee is able to resume work and, after being provided with the relevant designation notice, that the employee is able to perform the essential functions of their job. While the Village may contact the employee's health care provider for purposes of clarifying and authenticating the fitness certification, the Village may not delay the employee's return to work while contact with the health care provider is being made. Additionally, no second or third opinions of the fitness certification may be required. The employee is responsible for the cost of the fitness certification, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the fitness certification. The Village may delay restoration to employment until the employee submits the required fitness certification unless the Village has failed to provide the required designation notice. An employee who does not provide a fitness certification or request additional FMLA leave is not entitled to reinstatement. Similarly, unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated.

While the Village is not entitled to a certification of fitness to return to duty for each absence taken on an intermittent or reduced leave schedule, the Village is entitled to a fitness certification for such absences no more than once every 30 days if a reasonable safety concern exists regarding the employee's ability to perform their duties based on the serious health condition for which the employee took such leave. The Village must inform the employee at the same time it issues the designation notice that, for each subsequent instance of intermittent or reduced schedule leave, the employee will be required to submit a fitness certification unless one has already been submitted within the past 30 days.

(S) FAILURE TO RETURN FROM LEAVE: The failure of an employee to return to work upon the expiration of FMLA leave of absence will subject the employee to immediate termination, and the Village may recover any health plan premiums during the period of FMLA leave pursuant to Section (O).

(T) FRAUDULENT USE OF FMLA LEAVE: An employee who fraudulently obtains FMLA leave from the Village will be subject to immediate termination.

(U) LIMITATIONS ON APPLICABILITY OF POLICY: If application of the Family and Medical Leave Act to the Village ceases to be mandated, by amendment or repeal of the Federal enabling legislation or judicial decree, this Policy shall automatically cease to be in effect, except that any employees who are on FMLA leave at that time may complete such leave under the terms and conditions of this Policy.