

SAMPLE POLICY

## Family and Medical Leave Policy

### DISCLAIMER

*This sample policy is not legal advice or a substitute for consultation with knowledgeable and qualified legal counsel.*

*Baker McKenzie assumes no responsibility or liability for the contents of this generic policy, the only purpose of which is to illustrate some of the issues pertaining to employee family and medical leave policies in the U.S.*

*Employee family and medical leave laws may vary based on jurisdiction. Federal, state, and/or local law may apply depending on the location of the company, its operations, and its employees. While these laws are often similar, their differences can be material. The following sample policy does not account for the differences in applicable federal, state, and/or local law. This sample policy also does not account for changes in legislation, judicial and administrative precedent, or other developments and/or interpretations of applicable law.*

*Additionally, what are considered "best practices" for Company A may not be "best practices" for Company B. To be effective, an employee family and medical leave policy should not be a "cookie cutter" or a "one size fits all" policy. It should be tailored to the organization, and account for the company's specific workforce, operations, and industry.*

**THIS SAMPLE POLICY SHOULD NOT BE RELIED ON OR IMPLEMENTED AS A LEGALLY-COMPLIANT POLICY WITHOUT CONSULTATION FROM LEGAL COUNSEL.**

## FAMILY AND MEDICAL LEAVE POLICY

Under the Family and Medical Leave Act of 1993, as amended ("FMLA" or "the Act"), the Company provides, as set forth below, unpaid family and medical leaves of absence to "eligible employees."

### Approved Reasons for Leave

Eligible employees may take up to 12 or 26 weeks unpaid leave in a year under this policy as follows:

1. up to 12 weeks leave for the birth of an employee's child or to care for the newborn child;
2. up to 12 weeks leave for the placement of a child with the employee for adoption or state-approved foster care;
3. up to 12 weeks leave for the care of an employee's spouse, child or parent ("family member") who has a serious health condition, as defined under applicable law;
4. up to 12 weeks leave for the employee's own serious health condition, as defined under applicable law, which prevents the employee from performing any one of the essential functions of the employee's position;
5. up to 12 weeks leave for "qualifying exigency leave": the employee's responding or attending to a "qualifying exigency," as defined per applicable law, arising out of the fact that the parent, spouse, son, or daughter of the employee is on active military duty, or has been notified of an impending call to active military duty status, in support of a contingency operation; and

6. up to 26 weeks leave for "covered service member leave": the employee's care of a "covered service member" who has incurred a serious illness or injury in the line of duty while on active duty in the Armed Forces, and that illness or injury has rendered the service member medically unfit to perform the duties of the member's office, grade, rank or rating; the employee seeking leave must be related to the covered service member as his/her spouse, son, daughter, parent or the next of kin. "Next of kin," for purposes of this policy, is defined as the nearest blood relative of a covered service member, other than the covered service member's spouse, parent, son or daughter, in the following order of priority: blood relatives with legal custody, siblings, grandparents, aunts and uncles, and first cousins, and that person is needed to care for the covered service member.

### **Eligible Employee**

An active full-time or part-time employee is eligible for unpaid FMLA leave under any of the above leave categories provided that on the date the employee's leave is to commence:

1. The employee works at a Company worksite where fifty (50) or more employees are employed by the Company within a 75-mile radius of that worksite;
2. The employee has been employed by the Company for at least twelve (12) months (which need not be consecutive); and
3. The employee has worked 1,250 hours during the 12-month period immediately preceding the commencement of leave.

In determining FMLA eligibility, an employee re-employed following military service will be given credit for: (i) the period of uniformed service towards the months-of-employment eligibility requirement; and (ii) the hours of service that would have been performed but for the period of uniformed service.

### **Length of Family and Medical Leave and Qualifying Exigency Leave**

An eligible employee is entitled to a combined total of twelve (12) workweeks of unpaid leave within a 12-month period. The amount of leave available to an employee will be calculated by looking backward at the amount of leave taken within the 12-month period immediately preceding the first date of leave. Leave taken for the care of a newborn child or placement for adoption or foster care must be taken within twelve (12) months of the birth or placement of the child, and it must also be taken as an uninterrupted, continuous leave of absence unless the Company has approved the use of intermittent leave or a reduced schedule.

Intermittent leave or a reduced schedule may be approved for the employee's serious health condition or a family member's serious health condition where medically necessary and where the need for such leave is best accommodated through such scheduling. Intermittent leave or a reduced scheduled leave is also available for qualifying exigency leave.

These types of leave run concurrent with other leave entitlements provided under federal, state and local law to the extent covered and permitted by those laws.

### **Length of Covered Service Member Leave**

An eligible employee is entitled to a combined total of twenty-six (26) workweeks of unpaid leave within a single 12-month period for covered service member leave. Leave to care for an injured or ill service member, whether or not combined with other FMLA-qualifying leave, may not exceed twenty-six (26) weeks in a single 12-month period. In that single 12-month period, the employee is entitled to no more than twelve (12) weeks of leave for any of the other types of FMLA leaves. If both a husband and wife are employed by the Company and are eligible for covered service member leave, the two (2) may take a combined total of twenty-six (26) weeks. Intermittent leave or a reduced schedule may be approved for covered service member leave where medically necessary and where the need for such leave is best accommodated through such scheduling. An employee requesting intermittent leave/reduced schedule leave may be transferred temporarily to an available alternative position with equivalent pay and benefits, or to a part-time position with an equivalent hourly rate and benefits, if such a position better accommodates the need for intermittent leave/reduced schedule leave.

Covered service member leave runs concurrent with other leave entitlements provided under federal, state and local law to the extent covered and permitted by those laws.

### **Employee Notification Requirements**

If an employee expects to take leave under the FMLA, the employee must notify the Company of the intention to take leave at least thirty (30) days in advance when the need is foreseeable, or otherwise as soon as practicable. To provide such notice, the Company requests that the employee complete a Leave of Absence Request form. If the need for leave is not foreseeable, the employee must provide notification of leave to the Company as soon as practicable and under the established absenteeism and tardiness policies.

### **Medical Certification**

An employee who takes leave for the employee's serious health condition, to care for a family member with a serious health condition, or to care for a covered service member, must submit to the Company written medical certification of the need for such leave from the applicable health care provider within fifteen (15) calendar days of the request to provide the certification. An employee seeking such leave will be asked to submit a certification form detailing the reasons for the leave.

If an employee's medical certification is incomplete and/or insufficient, the Company may notify an employee in writing as to what is incomplete and/or insufficient and what is necessary to make the certification complete. The employee will then have seven (7) calendar days to cure any noted deficiencies by resubmitting the medical certification. Failure to ultimately provide a complete and sufficient certification may result in the denial of the requested FMLA leave. Where an employee has first been given the opportunity to cure a medical certification deficiency or deficiencies, the Company may subsequently, through either a human resources professional or leave administrator, contact the employee's health care provider directly to clarify or authenticate the certification.

The Company, where it has reason to doubt the validity of a medical certification, may request a second or third medical opinion at its expense for verification of an employee's serious health condition. The opinion of the third health care provider, who is approved jointly by the Company and the employee, shall be final and binding on the Company and the employee; provided, however, pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to leave sought under this Policy. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and the time off taken by the employee will be subject to the Company absenteeism

and tardiness policies or other like policies with violation of the same, resulting in possible disciplinary action, up to and including termination. In addition, while the employee is on leave, the Company may require the employee to provide recertification of the employee's medical condition and may inquire as to the employee's intentions to return to work.

An employee on uninterrupted, continuous leave due to the employee's own serious health condition will be required to provide a job-related medical certification of fitness before the employee is allowed to return to work. Likewise, for intermittent leave situations where reasonable job safety concerns exist, a fitness-for-duty certification may be requested before an employee may return to work. Failure to provide any such applicable certification may result in the delay or denial of job restoration.

Where an employee is on FMLA leave and is unable to return to work because of the continuation, recurrence or onset of the serious health condition of either the employee or the employee's family member, including a serious illness or injury suffered by a covered service member, the employee will be required to provide a certification issued by the applicable health care provider.

### **"Qualifying Exigency" Leave Certification**

An employee who takes a qualifying exigency leave must submit to the Company written certification of an impending call or order to activate duty in support of a contingency operation within fifteen (15) calendar days of the request to provide the certification. An employee seeking such leave will be asked to submit a certification form detailing the reason(s) for the leave. An employee may also be required to submit appropriate supporting documentation in the form of a copy of the covered military member's active duty orders or other military documentation indicating the appropriate military status and the dates of active duty status.

### **Benefits Continuation**

The same health care benefits coverage provided to an employee on the day prior to taking family and medical leave will be maintained for up to the twelve (12) weeks required for family and medical leave and qualifying exigency leave or up to the twenty-six (26) weeks required for covered service member leave, or as required by law, provided the employee continues to pay any required contribution for benefits. Employees who are on leave are responsible for making their periodic payment of the required contribution to the Company at the following address:

[INSERT ADDRESS]

Upon exhaustion of the applicable twelve (12) or twenty-six (26) workweeks of leave granted under this policy or if an employee fails to return to work at the end of the leave, a loss of coverage will occur, and continuation of health care coverage would be offered through COBRA. An employee who does not return from leave may be required, under certain circumstances provided by the Act, to reimburse the Company for any employee contributions paid by the Company while the employee was on unpaid leave.

While on leave, an employee must continue to pay the employee's contributions or loan payments for any applicable benefits; which would otherwise be automatically deducted from the employee's wages (e.g., supplemental life insurance, credit union loans, and 401(k) loans).

The period of time an employee is on family and medical leave will be treated as continued service for purposes of vesting and eligibility to participate under any available pension or retirement plan. Absences due to leave will not be counted as time worked for the purpose of seniority or computing vacation, sick leave or personal days.

### **Job Restoration**

An employee will be returned to the same or an equivalent position when the employee returns from family and medical leave, qualifying exigency duty leave or covered service member leave with no loss of benefits accrued prior to leave. An employee who does not return to work or fails to contact the Company at the end of an authorized leave is subject to termination of employment, as allowed under applicable law. In the event an employee's position with the Company is affected by a decision or event not related to the employee's leave of absence, e.g., job elimination due to a reduction in force, the employee will be affected to the same extent as if he or she was not on leave.

Certain "key employees" as defined under the FMLA may not be eligible to be restored to the same or an equivalent position after leave if doing so would cause substantial and grievous economic injury to the operations of the assigned company. The Company will notify such employees of their "key employee" status and the conditions under which job restoration will be denied, if applicable, and provide the key employee a reasonable opportunity to return to work after notification.

Company policy prohibits any interference, restraint, or denial of leave rights and prohibits any retaliation or discrimination for using leave entitlements.

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