

MODEL PAID FAMILY AND MEDICAL LEAVE POLICY FOR LOCAL GOVERNMENT EMPLOYEES

Note: Drafting a new paid family and medical leave policy requires analysis of current laws and policies. It will be important, as noted throughout this document, to consult with local partners—including labor partners who represent local government employees—and adapt this model based on applicable local or state law, existing local government personnel policies, and applicable public sector collective bargaining agreements.

For assistance or questions regarding this model and inquiries as to how it may be adapted for your local government, please contact:

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Section 1: Definitions

As used in this policy:

- (1) “Child” is, regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or a person to whom the employee stood in loco parentis when the person was a minor. [Note: We strongly recommend including children of any age, as this definition would do, to reflect that parents may need to provide care throughout a child’s life in the event of a child’s serious health condition.]
- (2) “Committed relationship” is a relationship in which the employee, and the domestic partner of the employee, share responsibility for a significant measure of each other’s common welfare. This includes, but is not limited to, any relationship between individuals of the same or different sex that is granted legal recognition by a State, Political Subdivision, or by the District of Columbia as a marriage or analogous relationship (including, but not limited to, a civil union).
- (3) “Domestic partner” is an adult in a committed relationship with another adult. [Note: This definition should be as broad as possible—such as a long-term partner, a fiancée, etc.—to include individuals in committed relationships, even if the relationship has not been legally formalized. Existing definitions of domestic partners in the local government and state should be reviewed to see if they are inclusive and appropriate for use in a leave policy].
- (4) “Employee” is as any individual employed by [local government] to provide services for compensation. [Note: This definition should be as broad as possible to ensure that all employees who work for the local government are included within the scope of the policy’s protections, with no restrictions for part-time workers who disproportionately lack access to leave. We strongly advise working with the local government and any local labor partners to ensure this definition is tailored to the local government.]

- (5) “Family member” is
- (a) A child;
 - (b) A biological, adoptive or foster parent, stepparent or legal guardian of an employee or an employee’s spouse or domestic partner, or a person who stood *in loco parentis* when the employee or the employee’s spouse or domestic partner was a minor child;
 - (c) A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee;
 - (d) A grandparent, grandchild or sibling (whether a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; or
 - (e) Any other individual related by blood or whose close association with the employee is the equivalent of a family relationship.
- (6) “Health care provider” is any person licensed under Federal law, any state law, or the laws of another country wherein the person practices to provide medical or emergency services, including but not limited to doctors, nurses and emergency room personnel, clinical social workers, [licensed/professional] counselors, or [certified/licensed] midwives. [Note: State law, as well as partners working on behavior/mental health or maternal health issues in your state, should be consulted on proper language for ensuring counselors and midwives are included, and documentation/forms should be available in multiple languages to accommodate non-US/non-English speaking health care providers.]
- (7) “Paid family and medical leave” is paid leave taken pursuant to this policy.
- (8) “Qualifying exigency leave” is leave based on a need arising out of an employee’s family member’s active duty service or notice of an impending call or order to active duty in the armed forces, including, but not limited to:
- (a) Providing for the care or other needs of the military member’s child or other family member;
 - (b) Making financial or legal arrangements for the military member;
 - (c) Attending counseling, military events or ceremonies;
 - (d) Spending time with the military member during a rest and recuperation leave or following return from deployment;
 - (e) Making arrangements following the death of the military member;
 - (f) Arranging for alternative care for a family member of the military member when the family member is incapable of self-care and the active duty or call to active duty status of the military member necessitates a change in the existing care arrangement for the family member;
 - (g) Providing care for a family member of the military member on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the family member is incapable of self-care and the need to provide such care arises from the active duty or call to active duty status of the military member;
 - (h) Admitting to or transferring to a care facility a family member of the military member when admittance or transfer is necessitated by the active duty or call to active duty status of the military member; or
 - (i) Attending meetings with staff at a care facility, such as meetings with hospice or social service providers for a family member of the military member, when such meetings are

necessary due to circumstances arising from the active duty or call to active duty status of the military member but not for routine or regular meetings.

[Note: The above definition exceeds the definition of exigency leave used in the federal Family and Medical Leave Act. If preferred, this definition can instead use a cross-citation to the federal FMLA: ““Qualifying exigency leave” is leave based on a need arising out of an employee’s family member’s active duty service or notice of an impending call or order to active duty in the armed forces, as defined in 29 U.S. Code § 2612(a)(1)(E).”]

- (9) “Retaliatory personnel action” means denial of or interference with any right guaranteed under this policy, including, but not limited to, any threat, discharge, suspension, demotion, reduction of hours or pay, any other adverse action against an employee for the exercise of any right guaranteed herein, or reporting or threatening to report an employee’s suspected citizenship or immigration status or the suspected citizenship or immigration status of a family member of the employee to a federal, state, or local agency.
- (10) “Safe leave” is any leave because the employee or the employee’s family member is the victim of domestic violence, the victim of stalking, or the victim of sexual assault. Safe leave under this policy applies if the employee is using leave to protect the employee or the employee’s family member by:
- (a) Seeking an order for protection pursuant to [state law];
 - (b) Seeking medical care, mental health counseling, or both for the employee or the employee’s family member to address physical or psychological injuries resulting from the act of domestic violence, stalking, or sexual assault;
 - (c) Making the employee’s or the employee’s family member’s home secure from the perpetrator of the act of domestic violence, stalking, or sexual assault, or seeking new housing or shelter to escape said perpetrator;
 - (d) Seeking legal assistance to address issues arising from the act of domestic violence, stalking, or sexual assault, or attending and preparing for court-related proceedings arising from said act or crime;
 - (e) Seeking services from a victim services organization; or
 - (f) Taking other steps necessary to protect or restore the employee’s or the employee’s family member’s physical, mental, emotional, and economic well-being while recovering from domestic violence, stalking, or sexual assault.

[Note: Many state paid family and medical leave laws cover safe leave, but the FMLA does not. If included within the scope of a local government policy, this definition should be amended to conform to state law, and partners working on domestic violence issues in your locality should be consulted here.]

- (11) “Serious health condition” is an illness, injury, impairment, pregnancy, recovery from childbirth, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility, or continuing treatment by a health care provider [OR “Serious health condition” is as defined at section 101(11) of the Family and Medical Leave Act, 29 U.S.C. 2611(11)].

Section 2: Covered Purposes for Leave

Beginning [DATE], an employee has the right to take paid family and medical leave:

- (1) Because of birth, adoption or placement through foster care, the employee is caring for a new child within 12 months of the anticipated birth, adoption or placement of that child, or has a need to be absent from work before an actual placement of a child in order for the placement for adoption or foster care to proceed; [Note: We strongly recommend ensuring that both parents have access to paid family leave to bond with a new child, as this provision would do. Limiting coverage to only one parent creates unnecessary burdens for families, prevents parents (most often fathers) who want to take time to care for their children from doing so, and reinforces existing care burdens on mothers.]
- (2) Because the employee is caring for a family member with a serious health condition;
- (3) Because the employee has a need for leave due to a serious health condition, including, but not limited to, pregnancy or pregnancy loss; [Note: It is important to confirm whether the local government already has a short-term disability policy that may already cover personal medical leave and, if so, whether that policy should be integrated here or improved separately.]
- (4) Because of any qualifying exigency leave; or
- (5) The employee has a need for safe leave.

Section 3: Duration of Leave

- (1) (a) The maximum number of weeks for which an employee may take paid family and medical leave for any particular qualifying need under section 2 in a 12-month period is 12 weeks. If both parents are eligible state employees, paid parental leave may be taken concurrently, consecutively, or at a different time as the other eligible state employee. [Note: At minimum, we recommend that the maximum duration for paid family and medical leave and benefits not be less than 12 weeks, which matches the maximum number of weeks of leave available under the federal FMLA. If possible, however, we recommend providing more than 12 weeks of paid leave, a standard being met by an increasing number of local governments around the country.]
- (b) The maximum number of weeks for which an employee may take paid family and medical leave in the aggregate is 12 weeks in a 12-month period. [Note: If possible, we strongly recommend allowing for leave and benefits to be taken for more than 12 weeks cumulatively. Alternatively, here you may specify that benefits are payable for an additional number of weeks to an employee with a serious health condition related to pregnancy or childbirth.]
- (2) While taking paid family and medical leave, employees will receive their full base rate of pay on the same pay schedule as the employee typically receives compensation from [local government].
- (3) Employees shall provide notice as soon as practicable of their intention to take leave under this policy; provided, however, that when the need for leave is foreseeable, employees shall not be required to provide more than [14] days' notice.

Section 4: Intermittent or Reduced Leave Schedule

- (1) An employee may take paid family and medical leave on an intermittent or reduced leave

schedule in which all of the leave authorized under this policy is not taken sequentially. Paid family and medical leave taken on an intermittent or reduced leave schedule shall not result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.

- (2) The employee shall make a reasonable effort to schedule foreseeable paid family and medical leave so as not to unduly disrupt the operations of [local government], subject where applicable to the recommendation of the employee's health care provider. The employee shall provide prior notice of the schedule on which the employee will be taking the leave, to the extent practicable.

Section 5: Leave and Employment Protection

- (1) Any employee who takes paid family and medical leave shall, upon the expiration of that leave, be entitled to be restored by [local government] to the position held by the employee when the leave commenced, or to be restored to an equivalent position with equivalent seniority, status, employment benefits, pay and other terms and conditions of employment including fringe benefits and service credits that the employee had been entitled to at the commencement of leave.
- (2) During any leave taken pursuant to this policy, [local government] shall maintain any health care benefits the employee had prior to taking such leave for the duration of the leave as if the employee had continued working continuously from the date the individual commenced the leave until the date the individual returns from paid family and medical leave; provided, however, that the employee shall continue to pay the employee's share of the cost of health benefits and that [local government] shall continue to pay [local government's] share of the cost of health benefits as required prior to the commencement of the leave.

Section 6: Retaliatory Personnel Actions Prohibited

- (1) [Local government] shall not interfere with or restrain or deny the exercise of, or the attempt to exercise, any right protected under this policy.
- (2) [Local government] shall not take retaliatory personnel action or otherwise discriminate against an employee because that employee exercised rights provided under this policy.
- (3) Paid family and medical leave taken under this policy shall not count as an absence that may lead to or result in discipline, discharge, demotion, suspension or any other adverse action [pursuant to [local government's] attendance or absence control policy]. [Note: this highlighted language is only needed where a local government has instituted an attendance or absence control policy for its employees.]

Section 7: Coordination of Benefits

- (1) (a) Paid family and medical leave under this policy that also qualifies as leave under the federal FMLA shall run concurrently with leave taken under the federal FMLA, as

applicable. Leave under this policy may also be used concurrently with other state and local leave laws, where applicable.

- (b) [Local government] may require that paid family and medical leave pursuant to this policy be paid concurrently or otherwise coordinated with payment made or leave allowed under the terms of a short-term disability policy. [Local government] must give employees written notice of this requirement. [Note: Whether or not this subsection (b) is needed may depend on any short-term disability in the local government and may need to be tailored/adapted based on such policy and whether it is incorporated into a new paid family and medical leave policy. Existing collective bargaining agreements covering any employees of the local government may need to be referenced as well.]
- (c) An employee shall not be required to use or exhaust any accrued vacation leave, sick leave, or other paid time off prior to or while taking paid family and medical leave under this policy. [An employee may choose to use any accrued vacation leave, sick leave, or other paid time off while taking paid family and medical leave under this policy to supplement paid family and medical leave up to one hundred percent of their base rate of pay.] [Note: The highlighted language in this provision is only necessary for policies that do not meet the recommended model of providing 100% of employees' wages during a period of leave.]

- (2) (a) This policy does not diminish [local government's] obligation to comply with any of the following that provide more generous leave and/or more generous benefits:
 - (i) a collective bargaining agreement;
 - (ii) any other [local government] policy; or
 - (iii) any applicable local, state, or federal law.
- (b) An employee's rights, privileges, or remedies to paid family and medical leave under this policy may not be waived after the effective date of this policy.
- (c) This policy does not diminish an employee's rights, privileges, or remedies under a collective bargaining agreement or [local government] policy, as applicable.

[Note: A local government's specific policies (including any applicable collective bargaining agreements) and labor partners representing local government employees should be consulted to assist with adapting this section as necessary.]

Section 8: Notice of Rights to Employees

- (1) [Local government] shall provide written notice pursuant to this section to each employee upon hiring and annually thereafter. Such notice shall include: (a) the employee's right to paid family and medical leave under this policy and the terms under which it may be used; (b) the right to employment restoration and benefits continuation under this policy; and (c) that discrimination and retaliatory personnel actions against an employee for requesting or using paid family and medical leave is prohibited under this policy.
- (2) [Municipality] shall also display and maintain a poster, provided by [local government] in a conspicuous place accessible to employees at all offices of [local government] employees that contains the information required by this section; provided, however, that in cases

where [a department or agency of the local government] does not maintain a physical workplace, or an employee teleworks or performs work through a web-based or app-based platform, notification shall be sent via electronic communication or a conspicuous posting in the web-based or app-based platform.

- (3) [Local government] must notify employees of the procedure for requesting paid family and medical leave and certification required pursuant to this policy.

Section 9: Certification

- (1) As provided by this section, [local government] shall establish reasonable procedures for requesting paid family and medical leave under this policy and shall institute forms and procedures that are not unduly burdensome to an employee. Such forms, including medical certification forms, shall be available in English and any other language typically used in communications between [local government] and the employee.
- (2) Certification for an employee taking leave under section 2(1) shall be sufficient if the employee provides, as applicable:
- (a) The child's birth certificate;
 - (b) A document stating the child's birth date issued by the health care provider of the child or the health care provider of the person who gave birth;
 - (c) A document issued by the health care provider of the child, an adoption agency involved in the adoption, or by other individuals, as determined by [local government], that confirms the adoption or anticipated adoption and the date of adoption or anticipated adoption;
 - (d) A document issued by the health care provider of the child, a foster care agency involved in the placement, or by other individuals, as determined by [local government], that confirms the placement or anticipated placement and the date of placement or anticipated placement; or
 - (e) A voluntary acknowledgement of parentage. [Note: State law should be consulted on proper language for ensuring acknowledgments of parentage are included as acceptable certification.]
- (3) Certification for an employee taking leave under section 2(2) shall be sufficient if it states the date on which the family member's serious health condition commenced, the probable duration of the condition, the appropriate medical facts within the knowledge of the health care provider, a statement that the employee is needed to care for the family member, and an estimate of the amount of time that the employee is needed to care for the family member.
- (4) Certification for an employee taking leave under section 2(3) shall be sufficient if it states the date on which the serious health condition commenced, the probable duration of the condition, and the appropriate medical facts within the knowledge of the health care provider.
- (5) Certification for an employee taking leave under section 2(4) shall be sufficient if it includes:
- (a) A copy of the family member's active-duty orders;

- (b) Other documentation issued by the Armed Forces; or
 - (c) Other documentation permitted by [local government].
- (6) [Note: Partners working on domestic violence issues in your locality should be consulted here.] Certification for an employee taking leave under section 2(5) shall be sufficient if the employee provides:
- (a) A police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;
 - (b) A court document indicating that the employee or employee's family member is involved in legal action related to domestic violence, sexual assault, or stalking;
 - (c) A signed statement from an attorney, member of the clergy, victim and witness advocate, or a medical or other professional affirming that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking; or
 - (d) The employee's statement, which need not be notarized or in any particular form, affirming that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave was taken for a safe leave purpose as defined in this policy.
- (7) Notwithstanding subsections (2) to (6), [local government] shall accept alternative certification for any leave under section 2 that demonstrates the employee's need for leave for a purpose specified under section 2.
- (8) Any medical, health, or other personal information required under this section shall be confidential and shall not be disclosed except with permission from the employee who provided it unless disclosure is otherwise required by law. Nothing in this section shall be construed to require an employee to provide as certification any information from a health care provider that would be in violation of section 1177 of the Social Security Act, 42 U.S.C. 1320d-6, or the regulations promulgated under section 264(c) of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

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