

## Town of Durham Family Medical Leave Policies

There are three (3) distinct Family Medical Leave policies that are taken into consideration when an employee needs this type of leave. The following are detailed descriptions of each type of leave. An employee may be eligible for more than one (1) of the leave policies, however, it should be noted, they are not eligible to receive, whether paid or unpaid, more than 12 weeks of leave in a 12 month-period.

### A. Paid Family Medical Leave (PFML)

Paid Family Medical Leave (PFML) will be provided consistent with the State of Maine law. PFML entitles eligible employees to take paid, job-protected leave for specified family, medical, military, and safe leave reasons. The State of Maine has engaged with Aflac who will be administering this leave, and for purposes of this policy is named the Administrator. Maine PFML will run concurrently with both the Maine unpaid FML law as well as the federal Family Medical Leave Act (FMLA), where applicable. It is important to note that the job protection for this type of leave begins after 120 days of employment with the Town of Durham.

#### Eligible Employees

All employees are eligible to request leave and once leave has been requested through the Administrator, the Administrator will determine eligibility.

To receive benefits, a covered individual must:

1. Be a covered employee as defined by the State.
2. Have earned wages paid in the State at least 6 times the state average weekly wage during the first 4 of the last 5 completed calendar quarters immediately preceding the first day of an individual's benefit year. For the purposes of these calculations, the state average weekly wage is that which was published effective on the July 1 immediately preceding the date of application for benefits or of the start of the leave, whichever is earlier.
3. Submit an application for benefits no more than 60 days before the anticipated start date of family leave and medical leave and no more than 90 days after the start date of family leave and medical leave.
4. Be employed as of the date of application for benefits if applying in advance of leave or be employed as of the date of leave beginning if applying retroactively for leave.
5. Have not been declared ineligible by the State.
6. Satisfy one of the qualifying reasons under the PFML law.

The following provisions apply regarding the eligibility to take leave:

1. A covered individual may take family leave immediately following medical leave if the medical leave is taken during pregnancy or recovery from childbirth and supported by documentation by a health care provider. If the covered individual is eligible as of the start of the medical leave for pregnancy and recovery from childbirth, that eligibility status shall be retained for the purposes of family leave for bonding with a child immediately following the medical leave, regardless of the covered individual's eligibility data as of the first day of the family leave. The combined medical leave and family leave may not exceed the 12-week maximum of family and medical leave within a benefit year.
2. The 12 weeks of aggregate leave taken under this Act will be reduced by any leave taken

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under the Federal FMLA and the Maine FML law that was not taken concurrently with leave under this Act in the 12-month period preceding the start of leave.

3. When determining an employee's eligibility to obtain benefits, the number of days an employee has worked for an employer shall not be considered by the Administrator.

### Reasons for Leave

An eligible employee shall be entitled to twelve (12) weeks of paid leave during a twelve (12) month period for one or more of the following reasons:

- Family leave: To care for family with serious health condition or to bond with a new child
- Medical leave: To care for one's own serious medical needs.
- Safe leave: To stay safe for to help a family member stay safe after abuse or violence.
- Military leave: For emergencies related to a family member's impending military deployment.

\*A serious health condition means an illness, injury, impairment, pregnancy, recovery from childbirth or physical, mental or psychological condition that involved inpatient care in a hospital, hospice or residential medical care center or continuing treatment by a health care provider.

\*Family member is defined as:

- Regardless of age, a child, including a child whose parentage has been determined under the Maine Parentage Act or any other biological child, adopted child, foster child or stepchild, or a child to whom the covered individual or spouse or domestic partner of the covered individual stands in loco parentis or a child the covered individual or spouse or domestic partner of the covered individual has under legal guardianship or any individual to whom the covered individual or spouse or domestic partner of the covered individual stood in any of these relationships when the individual was a minor child
- A parent, including a legal parent, biological parent, adoptive parent, foster parent, stepparent, de facto parent or legal guardian or a person who stood in loco parentis when the covered individual or spouse or domestic partner of the covered individual was a minor child; [PL 2023, c. 412, Pt. AAA, §7 (NEW).]
- A grandparent, including a legal grandparent, biological grandparent, adoptive grandparent, foster grandparent, step grandparent or de facto grandparent
- A grandchild, including a legal grandchild, biological grandchild, adoptive grandchild, foster grandchild, step grandchild or de facto grandchild
- A sibling, including a legal sibling, biological sibling, adoptive sibling, foster sibling, stepsibling or de facto sibling
- A spouse or domestic partner of a covered individual; or
- As designated by the covered individual in accordance with rule, an individual with whom the covered individual has a significant personal bond that is or is like a family relationship, regardless of biological or legal relationship.

When both spouses are employed by the Employer, they are each entitled to twelve (12) work weeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

### Use and Types of Leave

Continuous leave: Leave where you are out of work for days or weeks at a time.

Intermittent leave: Leave where you are still working, and you need to take time off, but it is not the same every day or every week.

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Reduced leave: Leave where you are still working but you are consistently working fewer hours.

### Use of Intermittent and Reduced Schedule leave

\*Intermittent and reduced schedule leave may be taken by the covered individual in increments of not less than a scheduled workday. If a covered individual and their employer agree in writing, the covered individual may take intermittent or reduced schedule leave in smaller increments, except that the minimum increment is one hour.

A covered individual approved for intermittent leave is not required to file a separate application for each occurrence of intermittent leave but must report any leave taken to the Administrator within 15 days after each occurrence for the purposes of providing benefits. A covered individual must still inform their employer of any intermittent leave use according to the employer's reporting policies.

If an applicant applies to take intermittent or reduced schedule leave from two or more employers participating in the Fund, the applicant must provide, for each employer, a leave schedule agreed to by the applicant and the employer that provides information regarding the number of hours the applicant is scheduled or anticipated to work for a specific workweek and the number of hours the employee will use leave for on a reduced or intermittent basis for each workweek during leave for benefit proration. The Weekly Benefit Amount is prorated based on the number of hours of leave taken from any of the employers from whom the covered individual is on leave and the covered individual's scheduled hours for all of the employers from whom the covered individual is on leave. In the absence of such agreement, the Administrator will determine the applicant's scheduled hours.

### PFML Premiums

For calendar years 2025 through 2027, the premium rate is 1% of employee wages. The Town of Durham has agreed to be responsible for the full 1% on behalf of the employees.

### Notice

Employees generally must provide reasonable advanced notice (30 days) to the employer of the employee's intent to use leave. When the need for leave is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances. If the employee is incapacitated, notice may be provided by a family member or health care provider on behalf of the employee. The employee's notice shall include the following information and must be in writing, which can include a standard form, letter, email, or text message provided to the employer:

1. The reason for the leave being requested (e.g. family, medical, safe leave, qualifying exigency);
2. The type of leave needed (e.g. continuous, reduced schedule, or intermittent leave);
3. Actual or anticipated timing and duration of leave;
4. Any other relevant information regarding the employee's need to take leave.

If the Employer acquires knowledge that a leave may be for a PFML-qualifying reason, the Employer can encourage the employee to file a claim. The Administrator will notify employees whether leave is designated as PFML leave and the amount of leave that will be deducted from the employees' PFML entitlement.

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An employee may also be required to provide specific forms to the Administrator in order for them to determine eligibility.

### Payment of Benefits

Approved benefits shall be paid by the State to the covered individual by direct deposit into a checking or saving account in a financial institution in the United States, or in the form of a debit card, if requested. Medical leave benefits are not payable to a covered individual for the first seven (7) consecutive calendar days beginning with the first day of leave.

### Employee Accruals

The Town of Durham encourages employees to utilize their individual leave accruals (sick, vacation, or personal time) to cover the first seven (7) consecutive calendar days, and the difference between the PFML benefit, and the employee's regular base weekly pay (full wage replacement) in order to ensure there is no disruption to the employee's deductions (such as health insurance).

If an employee is receiving another employer benefit during this leave, such as workers' compensation, long-term disability, or unemployment, there will be a dollar for dollar offset. At no time shall an employee receive double payment for any leave. If the benefit is short-term disability, PFML pays first, and STD can augment PFML wages up to full wage replacement. (See Reduction of Benefits below).

### Reduction of Benefits

For any week in which a covered individual is on family leave or medical leave, the covered individual's Weekly Benefit Amount must be reduced by the amount of wage replacement that the covered individual receives from a government program or law, including but not limited to unemployment insurance, workers' compensation (other than for compensation received under 39-A M.R.S. 213 for an injury that occurred prior to the family leave or medical leave claim), and other state or federal temporary or permanent disability benefits laws, or from an employer's permanent disability program or policy for the same week.

The covered individual's Weekly Benefit Amount is not subject to reduction by supplemental payments received from an employer's short term disability program or policy, to the extent that the payments combined with the PFML benefits do not exceed the individual's typical weekly wage.

### Examples

**Employee AWW = \$90,000 – weekly rate: \$1,730.00**

**SAWW 7-1-2025 = \$1,198.84 (it typically changes on a yearly basis in July)**

#### **Example #1: Workers' compensation claim:**

Employee worker's compensation rate: \$750.00 (tax free money)

PFML Benefit amount: \$1,198.84

Employee receives \$750.00 from WC and \$448.84 from PFML (dollar for dollar offset)

Employee Sick Accrual: \$531.16 (if employee chooses to use it)

If workers' compensation rate is higher than the SAWW, then employees just receive WC and 0 for PFML.

#### **Example #2: Short-term disability claim:**

Employee short-term disability (70%) \$650.00

PFML Benefit amount: \$1,198.84

Total: \$1,198.84 + \$650.00 = \$1,848.84 (exceeds weekly wage of \$1730.00) – so, the most that STD will pay is \$531.16

Employee Sick Accrual: \$0 (can't receive more than full wage replacement)

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### Calculation of Leave

Eligible employees can use up to twelve (12) weeks of leave during a twelve (12) month period. The Benefit Year begins on the Sunday prior to an employee taking leave and is established on a rolling basis. Each time an employee uses leave, the Administrator computes the amount of leave the employee has taken under this policy, subtracts it from the twelve (12) weeks, and the balance remaining is the amount the employee is entitled to take at that time. For example, if an employee has taken five (5) weeks of leave in the past twelve (12) months, they could take an additional seven (7) weeks under this policy. (The Administrator will keep track of the 12-week period for purposes of PFML). The PFML 12 weeks are reduced by a one (1) year look back for any FMLA/Maine Unpaid FML use not taken concurrently with PFML.

### Maintenance of Benefits

An employee shall be entitled to maintain all benefits provided or made available to employees by an employer, including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits, and pensions on the same basis as if they had continued to work at the Employer. To maintain uninterrupted coverage, the employee will be required to continue paying their share of insurance premium payments. The payment arrangement shall be made with the Town Manager or designee. If an employee is receiving concurrent sick, vacation, personal time, or other similar type leave, the premium may be deducted from the employee's paycheck, as is normally the practice. If an employee is not receiving concurrent leave time, the employee will be required to pay for their share of benefits on a monthly basis.

Sick, vacation, personal time, and holidays will not be earned or accrue **beyond** the twelve (12) week leave period, (unless otherwise required by law) consistent with the Employer's paid leave policies. However, the use of family or medical leave will not be considered a break in service when vesting or eligibility to participate in benefit programs is being determined. Seniority of position is not affected.

### Job Restoration

When an employee returns from PFML, they will be restored to the same or an equivalent position, with equivalent benefits, pay, and other terms and conditions of employment unless:

- Employee has not been employed with the Employer for at least 120 consecutive days.
- Employment with the Employer would have terminated if no leave had been taken.
- Employee has given notice of their intent to terminate employment during their PFML; or
- Employee, with or without reasonable accommodations, cannot safely perform the essential functions of the job to which they may be restored.

### Undue Hardship

Except in a medical or other sudden emergencies an employer can claim an undue hardship in certain circumstances and request that the leave be scheduled at a mutually, agreeable time. If the employee and employer agree to a schedule of leave, the employer may waive the 10-day review of undue hardship on a form and manner provided by the department at the time of the employee's application of leave.

## **B. Federal Family and Medical Leave (FML)**

FML will run concurrently with other types of leave and leave benefits, including but not limited to workers' comp., short term disability, Maine PFML, and the Maine FML., and while the employee is using their own accrued leave (such as sick, vacation, and personal).

### Federal FMLA (Family Medical Leave Act)

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to

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take unpaid, job-protected leave for specified family and medical reasons.

### Eligible Employees

Only eligible employees are entitled to take FMLA leave. An eligible employee is one who:

- Works for a *covered employer* Town of Durham.
- Has worked for the employer for at least 12 months.
- Has at least 1,250 hours of service for the employer during the 12-month period immediately preceding the leave; and
- Works at a location where the Town of Durham has at least 50 employees working within a 75-mile radius of the Town of Durham.

The 12 months of employment do not have to be consecutive. That means any time previously worked for the same employer (including seasonal work) could, in most cases, be used to meet the 12-month requirement. If the employee has a break in service that lasted seven years or more, the time worked prior to the break will not count *unless* the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement, including a collective bargaining agreement, outlining the employer's intention to rehire the employee after the break in service. See "FMLA Special Rules for Returning Reservists".

### Leave Entitlement

An eligible employee shall be entitled to twelve (12) workweeks of unpaid leave during a twelve (12) month period for one or more of the following reasons:

- the birth or placement of a child for adoption or foster care.
- to care for a spouse, child, or parent who has a serious health condition.
- for a serious health condition\* that causes the employee to be unable to perform the essential functions of his or her job; or
- For any qualifying exigency arising out of the fact that a spouse, child, or parent is a military member on covered active duty or call to covered active-duty status.
- a serious health condition, which shall be defined as an illness of a serious and long-term nature resulting in recurring or lengthy absences. Treatment of such an illness would occur in an inpatient situation at a hospital, hospice, or residential medical care facility, or would consist of continuing care provided by a licensed health care provider.

\*A serious health condition means an accident, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider.

When both spouses are employed by the Employer, they are each entitled to twelve (12) work weeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent who has a serious health condition.

An eligible employee may also take up to **26 workweeks** of leave during a "single 12-month period" to care for a covered servicemember with a serious injury or illness, when the employee is the spouse, child, parent, or next of kin of the servicemember. The "single 12-month period" for military caregiver leave is different from the 12-month period used for other FMLA leave reasons.

Under some circumstances, employees may take FMLA leave on an intermittent or reduced schedule basis. That means an employee may take leave in separate blocks of time or by reducing the time he or she works each day or week for a single qualifying reason. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operations. If FMLA leave is for the birth, adoption, or foster placement of a child, use of intermittent or reduced schedule leave requires the employer's approval.

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### Notice

Employees generally must request leave 30 days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.

If the Employer acquires knowledge that a leave may be for a FMLA-qualifying reason, the Employer will provide the employee with notice concerning their eligibility for FMLA leave and their rights and responsibilities under the FMLA. The Employer will also notify employees whether leave is designated as FMLA leave and the amount of leave that will be deducted from the employees' FMLA entitlement.

### Certification

An employee may also be required to provide medical certification during the leave, along with periodic updates on their status and intent to return to work. If their leave was requested because of their own serious health condition, the employee will be required to provide medical certification of their availability to return to work.

When a medical leave is not foreseeable, employees must provide the required certification within 15 calendar days after the Employer's request for certification unless it is not practical under the circumstances to do so. Failure to provide the required medical certification may result in the denial of foreseeable leaves until such certification is provided. In the case of unforeseeable leaves, failure to provide the required medical certification within 15 days of being requested to do so may result in a denial of the employee's continued leave. Any request for an extension of the leave also must be supported by an updated medical certification.

### Substitution

The Town of Durham requires employees, to "substitute" (run concurrently) their accrued sick, vacation, personal, and Maine Paid Family Medical leave (if eligible) to cover all the FML period. If an employee is receiving another benefit during this leave, such as workers' compensation, Maine Paid Family Medical Leave, or short-term disability, the employee may choose to use accrued sick, vacation or personal time to bring themselves up to their regular weekly pay. At no time shall an employee receive double payment for any leave.

### Calculation of Leave

Eligible employees can use up to twelve (12) weeks of leave during any twelve (12) month period. The Employer will use a rolling twelve (12) month period, measured backward from the date an employee uses any FMLA leave. Each time an employee uses leave, the Employer computes the amount of leave the employee has taken under this policy, subtracts it from the twelve (12) weeks, and the balance remaining is the amount the employee is entitled to take at that time. For example, if an employee has taken five (5) weeks of leave in the past twelve (12) months, they could take an additional seven (7) weeks under this policy.

### Maintenance of Benefits

An employee shall be entitled to maintain group health insurance coverage on the same basis as if they had continued to work at the Town of Durham. To maintain uninterrupted coverage, the employee will be required to continue paying their share of insurance premium payments. The payment arrangement shall be made with the Town Manager. If an employee is receiving concurrent sick, vacation, or compensatory time, the premium will be deducted from the employee's paycheck, as is normally the practice. If an employee is not receiving concurrent sick, vacation, or personal time, the employee will be required to pay for their share of benefits on a monthly basis.

Sick, vacation, personal time, and holidays will not accrue **beyond** the twelve (12) week leave

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period, (unless otherwise required by law) consistent with the Employer's paid leave policies. However, the use of family or medical leave will not be considered a break in service when vesting or eligibility to participate in benefit programs is being determined. Seniority of position is not affected.

### Job Restoration

When an employee returns from FML, they will be restored to the same or an equivalent position unless:

- Employment with the Employer would have terminated if no leave had been taken;
- Employee has given notice of their intent to terminate employment during their FML; or
- Employee, with or without reasonable accommodations, cannot safely perform the essential functions of the job to which they may be restored.

Employees accepting employment elsewhere while on FMLA leave may be disciplined, up to and including discharge.

## **C. Maine Family and Medical Leave (Unpaid)**

FML will run concurrently with all other leave and leave benefits, including but not limited to Workers' Comp., Short Term Disability, Federal FML, and Paid Family Medical Leave (PFML), and while the employee is using their own accrued leave (such as sick, vacation, and personal time).

### Eligible Employees

Only eligible employees are entitled to take Maine Family Medical Leave. Eligible employees are:

- Employees who have worked for the Employer for 12 consecutive months

### Leave Entitlement

An eligible employee shall be entitled to ten (10) workweeks of unpaid leave during any two years for one of the following reasons: (The two-year period in which leave may be taken is determined by a twenty-four-month period measure from the date an employee's first FML leave begins.)

- Employee's serious health condition
- Birth of the employee's child or the employee's domestic partner's child
- Placement of a child 16 years of age or less with the employee or with the employee's domestic partner in connection with the adoption of the child by the employee or the employee's domestic partner
- A child, domestic partner's child, parent, domestic partner, sibling, or spouse with a serious health condition
- The donation of an organ of that employee for a human organ transplant
- The death or serious health condition of the employee's spouse, domestic partner, parent, sibling, or child if the spouse, domestic partner, parent, sibling, or child is a member of the state military forces as defined in Title 37-B, Section 102, or the United States Armed Forces, including the National Guard and Reserves, dies or incurs a serious health condition while on active duty.

The Employer may, in its discretion, allow an employee to take intermittent leave or work a reduced schedule because of the birth, adoption, or placement of a child. The Employer will review the individual circumstances involved, considering the needs of the Employer, the employee's length of service, number of requests, duties, workload, and the employee's job performance.

### Notice

Employees generally must request leave 30 days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.

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If the Employer acquires knowledge that a leave may be for a FML-qualifying reason, the Employer will provide the employee with notice concerning their eligibility for FML and their rights and responsibilities under the Maine FML law. The Employer will also notify employees whether leave is designated as FML leave and the amount of leave that will be deducted from the employees' FML entitlement.

### Certification

An employee may also be required to provide medical certification during the leave, along with periodic updates on their status and intent to return to work. If their leave was requested because of their own serious health condition, the employee will be required to provide medical certification of their availability to return to work.

When a medical leave is not foreseeable, employees must provide the required certification within 15 calendar days after the Employer's request for certification unless it is not practical under the circumstances to do so. Failure to provide the required medical certification may result in the denial of foreseeable leaves until such certification is provided. In the case of unforeseeable leaves, failure to provide the required medical certification within 15 days of being requested to do so may result in a denial of the employee's continued leave. Any request for an extension of the leave also must be supported by an updated medical certification.

### Substitution

The Employer requires employees, to "substitute" (run concurrently) their accrued sick, vacation, personal time, and Maine Paid Family Medical leave (if eligible) to cover all the FML period. If an employee is receiving another benefit during this leave, such as workers' compensation, Maine Paid Family Medical Leave, or short-term disability, the employee may choose to use accrued sick, vacation, and personal time to bring themselves up to their regular weekly pay. At no time shall an employee receive double payment for any leave.

### Calculation of Leave

Eligible employees can use up to ten (10) work weeks of leave during any twenty-four (24) month period. The Employer will use a rolling twenty-four (24) month period, measured backward from the date an employee uses any FML. Each time an employee uses leave, the Employer computes the amount of leave the employee has taken under this policy, subtracts it from the ten (10) weeks, and the balance remaining is the amount the employee is entitled to take at that time. For example, if an employee has taken five (5) weeks of leave in the past twenty-four (24) months, they could take an additional seven (7) weeks under this policy.

### Maintenance of Benefits

Employees taking leave under the Maine FML may continue their benefits during their leave at the employee's expense. Sick, vacation, personal time, and holidays will not accrue beyond the twelve (12) week leave period, consistent with the Employer leave policies.

### Job Restoration

When an employee returns from Maine FML, they will be restored to the same or an equivalent position unless:

- Employment with the Employer would have terminated if no leave had been taken;
- Employee has given notice of their intent to terminate employment during their FML; or
- Employee, with or without reasonable accommodations, cannot safely perform the essential functions of the job to which they may be restored.

Employees accepting employment elsewhere while on FML may be disciplined, up to and including discharge.