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**Lansing Housing Commission
Policy No. 2010-01
Family and Medical Leave Policy**

OVERVIEW

This Policy is based on the requirements of the Family and Medical Leave Act of 1993 as amended (“FMLA”), including new Military Family Leave Amendments (MFLA). It is designed to comply with the FMLA in a manner that is beneficial to the Lansing Housing Commission (“LHC”) and its employees. In addition to this FMLA Policy, a Standard Operating Procedure (“SOP”) will be provided to staff. The SOP will provide staff with the forms and information needed to process FMLA leave requests.

ELIGIBILITY

An employee is eligible to request a FMLA leave if he/she has been an employee of the LHC for at least 12 months and has worked at least 1,250 hours during the 12-month period immediately preceding the leave. Employees must provide thirty 30 calendar days’ advance notice or if unforeseen, as soon as practicable, within two (2) days, of when an employee learns of the need for a leave, unless it is otherwise identified within this document. If less than a 30-day notice is given, an explanation of why no 30-day advance notice was provided will be required.

KEY DEFINITIONS

Active Duty or Call to Active Duty Status -29CFR (825.126)

For purposes of exigency leave, the term “active duty or a call to active duty status” means duty under a federal call or order to active duty (not a State call to active duty unless by order of the President of the United States) in support of a contingency operation pursuant to specific enumerated provisions of Section 688 of Title 10 of the United States Code. Such active duty or call/order to active duty is only made to members of the National Guard or Reserve components or a retired member of the Regular Armed Forces or Reserve. Therefore, an employee may not take exigency leave if the service member is a member of the Regular Armed Forces.

Covered Servicemember - 29CFR (825.800)

For purposes of Military Caregiver Leave (MCL), a covered servicemember is a *current* member of the Regular Armed Forces, National Guard, or Reserve, including those on the temporary disability retired list (TDRL), but not including former members or members on the permanent disability retired list. Generally, a former member of the military whose injury or illness manifests itself after the member’s discharge

from military service (except for those on the TDRL) is not a covered servicemember. The servicemember must be receiving medical treatment or oversight by a Department of Defense or Veterans Affairs health care provider or by a Department of Defense TRICARE network or non-network authorized private health care provider.

Health Care Provider - 29CFR (825.125)

Physician assistants who are authorized to practice under state law qualify as health care providers and all medical para-professionals who fall within the definition of “health care provider” (nurse practitioners, nurse-midwives, clinical social workers, and physician assistants) must be performing within the scope of their practice as defined under state law.

Leave

Approved absence from work which may be paid or unpaid.

Needed to Care For - 29CFR (825.124)

“An employee may take leave to care for a family member if needed to provide physical and/or psychological care. The employee does not need to be the only individual or family member available to provide the care nor is the employee required to provide actual care (e.g., someone else is providing in-patient or home care) as long as the employee is providing at least psychological comfort and reassurance.

Definition of Spouse – 29CFR (825.102 & 122)

Pursuant U.S. Supreme Court; U.S. v. Windsor; the DOL issued a final ruling on into effect on March 27, 2015. The Final Rule amends the regulatory definition of spouse under FMLA so that eligible employees in legal same-sex marriages will be able to take FMLA leave to care for their spouse or family member, regardless of where they live. This will ensure that the FMLA will give spouses in same-sex marriages the same ability as all spouses to fully exercise their FMLA rights.

Next of Kin - 29CFR (825.127)

The term “next of kin”, used with respect to an individual, means the nearest blood relative of that individual.

Prenatal Care - 29CFR (825.120)

The employee husband of a pregnant spouse is entitled to a FMLA leave to care for the pregnant spouse who has severe morning sickness or other prenatal complications (and may need physical care) and to accompany her to prenatal doctors’ appointments (and may need to be driven or need psychological care). Such leave is not available to a non-spouse father of the child (e.g. boyfriend or Fiancé).

Qualifying Exigency under Military Leave - 29CFR (825.126)

A qualifying exigency is a non-medical activity that is directly related to the covered military member’s active duty or call to active duty status. For an activity to qualify

as an exigency, it must fall within one of seven (7) categories of activities or be mutually agreed to by the employer and employee. The seven (7) categories of qualifying exigencies are (a) short-notice deployment (leave permitted up to seven (7) days if the military member receives seven (7) or less days' notice of a call to active duty), (b) military events and related activities, (c) certain temporary childcare arrangements and school activities (but not ongoing childcare), (d) financial and legal arrangements, (e) counseling by a non-medical counselor (such as a member of the clergy),

(f) rest and recuperation (leave permitted up to five (5) days when the military member is on temporary rest and recuperation Leave), (g) post-deployment military activities.

Serious Health Condition - *Chronic Conditions 29CFR (825.115)*

A chronic condition is one that: (a) requires visits for treatment by a health care provider at least twice a year; (b) continues over an extended period of time (including recurring episodes of a condition); and (c) may cause episodic incapacity rather than a continuing period of incapacity.

Serious Health Condition - *Continuing Treatment 29CFR (825.115)*

Whether such a condition causes an "incapacity" for FMLA Leave is: (a) measured by the duration of the incapacity itself (more than three (3) full consecutive days); (b) requires in-person treatment by a health care provider at least once within seven (7) days of the first day of incapacity; and (c) requires either (i) a regimen of continuing treatment initiated by the health care provider during the first treatment or (ii) a second in-person visit to the health care provider for treatment (the necessity of which is determined by the health care provider) within 30 days of the first day of incapacity.

TYPES OF LEAVE

There are five (5) basic types of FMLA's under this Policy: Employee Medical Leave, Family Medical Leave, New Child Leave, Military Exigency Leave, and Military Caregiver Leave.

- Employee Medical Leave is defined as time off due to a serious health condition of the employee, as certified by a health care provider.
- Family Medical Leave is defined as time off to care for a spouse, child or parent, with a serious health condition, as certified by a health care provider.
- New Child Leave is defined as time off following the birth of a child or placement of a child through adoption or foster care.
- Military Exigency Leave is defined as time off because of any qualifying exigency arising because the spouse, child, or parent of an employee is 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.
- Military Caregiver Leave is defined as time off to care for a spouse, child, parent or next of kin who is a member of the Armed Forces, including a member of the National Guard or Reserves, and 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 by the service member in the line of active duty.

REASONS FOR 12-WEEK LEAVE

Subject to the requirements described in this Policy, an eligible employee may request and will be granted up to 12 workweeks of unpaid FMLA leave during any 12-month period (i.e., a rolling 12-month period measured backward from the date requested leave will be used) for one or more of the following events:

- The birth of a child, which falls under Employee Medical Leave;
- The placement of a child for adoption or foster care (with the employee) and first year care of a child following birth or placement for adoption or foster care, which falls under

New Child Leave;

- The care of the employee's spouse, child or parent with a serious health condition, which falls under Family Medical Leave;
- The employee's own serious health condition, which renders him/her unable to perform the functions of the employee's position, which falls under Employee Medical Leave
- A qualifying exigency arising because the spouse, child, or parent of an employee is 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, which falls under Military Exigency Leave. This leave only applies when a covered military member is the employee's spouse, son, daughter, or parent who is on active duty or call to active duty status. Active duty or call to active duty status refers to a member of the National Guard or Reserves, not to service members in the Regular Armed Forces.

REASONS FOR 26-WEEK LEAVE

Subject to the requirements described in this Policy, an eligible employee may request and will be granted Military Caregiver Leave consisting of up to 26 workweeks of unpaid FMLA leave during a 12-month period to care for a spouse, child, parent or next of kin who is a member of the Regular Armed Forces or a member of the National Guard or Reserves, 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 by the service member in the line of active duty. This Leave is only available to the employee during a single 12-month period. In no 12-month period may an employee's total FMLA and Military Caregiver Leave exceed 26 workweeks.

REINSTATEMENT

Unless one of the exceptions in the law applies, an employee who takes an FMLA leave for the intended purposes of the leave shall be entitled, on timely return from the leave and completion of all required documentation, to be restored to the position of employment held when the leave commenced or to an equivalent position with

equivalent employment benefits, pay and other terms and conditions of employment. Taking an FMLA Leave shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced; provided, however, that nothing in this Policy shall entitle any employee who returns from leave to the accrual of any seniority or additional employment benefits during the period of the leave except as provided in LHC's Personnel Manual or an applicable collective bargaining agreement.

HEALTH BENEFITS

At the election of the eligible employee, any group health plan as defined by the FMLA will be maintained for the duration of a FMLA leave and at the level and under the conditions coverage would have been provided if the employee had continued in employment for the duration of the leave. The employee will be responsible for paying his/her share of the premium. While on an unpaid FMLA leave, the employee will be responsible for paying this part of the premium by submitting payment to Human Resources, on or before the 15th day of each month. If an employee fails to timely pay his or her share of the premium, the LHC reserves the right to cancel coverage, as permitted by law.

The LHC may recover its share of the premiums for maintaining coverage for the employee under such group health plan during the period of a FMLA leave if the employee fails to return to work, or returns but fails to stay thirty (30) calendar days, for reasons other than the continuation or onset of a serious health condition entitling the employee to the leave, the continuation, recurrence or onset of a medical condition that entitles the employee to Military Caregiver Leave, or other circumstances beyond the employee's control as determined by the LHC. Certification of inability to return to work as specified and allowed by the FMLA may be required.

SUBSTITUTION OF PAID LEAVE

An employee must utilize any available sick leave for Employee Medical Leave, Family Medical Leave or Military Caregiver Leave. After available the sick leave is exhausted, the employee must utilize any available vacation or personal leave. An employee must utilize any available vacation or personal leave for New Child Care Leave or Military Exigency Leave. Once all available leave is exhausted, the balance of any leave will be unpaid. In no case will the combination of paid and unpaid leave used for purposed FMLA exceed the maximum leave allowed under the FMLA. During a certified period of disability due to the birth of a child, an employee will be on Employee Medical Leave and use accrued sick time. Any additional leave due to the birth of a child and the need to care for such child will be New Child Leave for which vacation or personal time will be applied.

NEW CHILD LEAVE

FMLA leave for first year care of a child after birth, or for the placement of a child for adoption or foster care falls under New Child Leave. Such leave includes paternal

leave and must be taken within the 12-month period that starts on the date of such birth or placement. Regardless of when such leave begins, it will end no later than the end of the 12-month period. Unless specifically permitted, FMLA leave for these purposes cannot be taken on an intermittent or reduced leave schedule.

MARRIED COUPLES

If both spouses are employed by the LHC, they are limited to a combined total of 12 workweeks of FMLA leave during any 12-month period for the birth of a child or the placement of a child for adoption or foster care; or to care for the employee's parent, but not a parent-in-law, with a serious health condition. However, each employee may use up to 12 workweeks of FMLA leave during any 12-month period if the leave is for Family Medical Leave or Employee Medical Leave. If both spouses are employed by the LHC, they are limited to a combined total of 26 workweeks during the single 12-month period if the leave is Military Caregiver Leave or a combination of Military Caregiver Leave and Family Medical Leave, Employee Medical Leave or Military Exigency Leave.

ADVANCE NOTIFICATION OF NEED FOR NEW CHILD LEAVE

An eligible employee who foresees that she/he will require a leave for the birth/care of a child, or for adoption or foster care placement, must notify his/her supervisor and the Human Resources in writing not less than 30 calendar days in advance of the start of the leave. If not foreseeable, the employee must provide as much written notice as is practicable under the circumstances, generally within two (2) working days of learning of the need for leave.

ADVANCE NOTIFICATION OF NEED FOR FAMILY MEDICAL LEAVE, EMPLOYEE MEDICAL LEAVE OR MILITARY CAREGIVER LEAVE

An employee who foresees the need for a leave due to planned medical treatment for herself/himself or for an applicable family member, must notify his/her supervisor and Human Resources, in writing, as early as possible so that the absence can be scheduled at a time least disruptive to the LHC's operations. Such notice must be at least 30 calendar days in advance of the start of leave, unless impracticable, in which case the employee must provide the written notice as early as circumstances permit, generally within two (2) working days of learning of the need for leave. When planning medical treatment, the employee should schedule the leave so as to minimally disrupt the LHC's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with their supervisors prior to scheduling treatment in order to work out a treatment schedule that best suits the needs of both the employee and the LHC.

ADVANCE NOTIFICATION OF NEED FOR MILITARY EXIGENCY LEAVE

An employee who foresees the need for such leave, whether because the employee's spouse, child, or parent is on active duty or because of notification of an impending call or order to active duty in support of a contingency operation, must notify his/her supervisor and Human Resources in writing as soon as is reasonable and practicable.

MEDICAL CERTIFICATIONS

If the requested leave is for Family Medical Leave or Military Caregiver Leave, the employee will be required to file a health care provider's certification providing information as to the serious health condition and stating that the employee is needed to care for the family member with his/her supervisor and Human Resources, in a timely manner.

If the requested leave is Employee Medical Leave, the employee will be required to file a health care provider's certification providing information as to the condition and inability to perform one or more essential functions of the job with his/her supervisor and Human Resources.

The LHC may request subsequent re-certifications during the course of the leave in accordance with the limitations set forth in the FMLA regulations.

Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employees' family members will be maintained as confidential medical records in files separate from the usual personnel files, subject only to the limited exceptions set forth in the FMLA regulations.

INTERMITTENT AND REDUCED LEAVE SCHEDULE

Subject to the limitations and certifications allowed by the FMLA, Family Medical Leave, Employee Medical Leave and Military Caregiver Leave may be taken intermittently or on a reduced leave schedule when medically necessary, provided a health care provider certifies the expected duration and schedule of such leave and provides further that the employee gives the supervisor and Human Resources at least 30 days advance written notice if the need for the leave is foreseeable based on planned medical treatment.

The employee may be required or may elect to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave than the employee's regular position.

Subject to the limitations and certifications allowed by the FMLA, Military Exigency Leave may be taken intermittently or on a reduced schedule basis. In the case of intermittent Leave or Leave on a reduced leave schedule which is medically necessary, an employee must inform his or her supervisor, upon request, of the reasons why the intermittent or reduced leave schedule is necessary and of the schedule for treatment, if applicable. In these cases, employees are ordinarily expected to consult with their supervisors prior to scheduling treatment in order to work out a treatment schedule that best suits the needs of both the employee and the LHC.

If an employee who provides notice of the need to take FMLA leave on an intermittent

basis or a reduced leave schedule for planned medical treatment neglects to consult with his or her supervisor to make an attempt to arrange the schedule of treatments so as to not unduly disrupt the LHC's operations, the supervisor may initiate discussions with the employee and require him or her to attempt to make such arrangements, subject to the approval of the health care provider.

STATUS REPORTS AND FITNESS-FOR-DUTY CERTIFICATION

An employee on an approved leave under this Policy must inform the supervisor and Human Resources regarding her/his status and intent to return to work upon conclusion of the leave. An employee may also be required to submit a fitness for-duty certification before returning to work.

SECOND AND THIRD MEDICAL OPINIONS

In cases where there is reason to doubt the validity of the health care provider's certification for Family Medical Leave or Employee Medical Leave, the LHC may, at its own expense, require second and third opinions, as specified by the FMLA, to resolve the issue.

INTENT TO COMPLY WITH LAW

The provisions of this Policy are intended to comply with the ***Family and Medical Leave Act of 1993 (FMLA)***, as amended, and any terms used from the FMLA will be as defined in the FMLA or the U.S. Department of Labor regulations implementing the FMLA. To the extent that this Policy is ambiguous or contradicts the FMLA or its regulations, the language of the FMLA or its regulations will prevail. The LHC reserves the right to amend this Policy from time to time to comply with any changes to the FMLA or its regulations.