

## RESOLUTION R-6-03

### A RESOLUTION ESTABLISHING A FAMILY AND MEDICAL LEAVE POLICY FOR THE VILLAGE OF SPENCER, OHIO, AND DECLARING AN EMERGENCY

BE IT RESOLVED by the Council of the Village of  
Spencer, Ohio, three-fourths (3/4) of its members concurring  
herein as follows:

Section 1: That a Family and Medical Leave Policy is  
hereby established for the Village of Spencer, Ohio.

Section 2: That a copy of said Policy is marked  
"Exhibit A," attached hereto and made a part hereof.

Section 3: That this Resolution is hereby declared to  
be an emergency measure necessary for the public peace, health,  
safety, and welfare of the citizens of the Village of Spencer and  
for the particular reason that this Resolution must be passed by  
the Spencer Village Council to establish a family and medical  
leave policy for employees of the Village of Spencer, and this  
Resolution shall be in full force and effect from and after its  
passage.

PASSED: December 17, 2003

ATTEST:

  
TOMMY RAMEY, Mayor

  
RHONDA R. RIFFLE, Village Fiscal Officer

# VILLAGE OF SPENCER

## FAMILY AND MEDICAL LEAVE POLICY

The Village of Spencer, Ohio, adopts this policy in order to define the Village's policy and procedure with regard to Family and Medical Leave.

A. An employee who has been employed by the Village of Spencer for at least twelve (12) months and who has actually worked at least 1,250 hours of service during the twelve (12) month period immediately preceding the commencement of the leave is eligible for family and medical leave as provided in this policy. For employees not eligible for, or otherwise not entitled to, family and medical leave, the Village will review the individual circumstances involved.

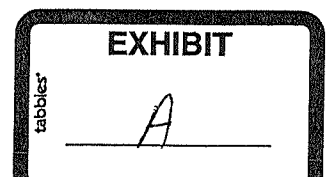
B. An eligible employee will be permitted a total of twelve (12) workweeks of family and medical leave during the twelve (12) month period measured forward from the date the employee first uses family and medical leave. Family and medical leave may be taken for the following reasons:

1. To care for the employee's child after the birth of the child (See subsection N for the definitions of child and parent);
2. To care for a child after placement with the employee by way of adoption or foster care;
3. To care for the employee's spouse, child, or parent who has a serious health condition; or
4. Because of a serious health condition that makes the employee unable to perform the essential functions of the employee's position, including a Worker's Compensation qualifying injury.

C. An eligible employee shall be required to use all available accrued vacation, holiday, personal, and sick leave (if applicable, See 1. below), prior to being granted an unpaid family and medical leave.

1. Use of paid sick leave may be allowed only when the circumstances for family and medical leave also meet the requirements for use of sick leave under the Village's sick leave policy or applicable collective bargaining agreement.

D. An eligible employee will be required to provide the Village with thirty (30) days' advance notice of the employee's intent to take family and medical leave. However, where the need for leave is not foreseeable thirty (30) days in advance, the employee shall provide as much advance notice as practicable. Application for leave forms (Form A) shall be submitted to the



employee's immediate supervisor. Where an employee has no valid excuse for a delay in notice, the Village may delay the unpaid leave until thirty (30) days after the notice has been received.

E. The Village will require the employee to provide a Certification of Physician or Practitioner (Form B) from the employee's healthcare provider in order to support a leave request to care for a spouse, child, or parent who has a serious health condition, or for a leave due to a serious health condition that makes the employee unable to perform the functions of the employee's position.

The Village, at the Village's expense, may require a second opinion on the validity of the certification. Should a conflict arise between the opinions of the two (2) healthcare providers, a third opinion will be sought. The third opinion will be provided by the healthcare provider mutually agreeable to the employee and the Village. The expense of a third opinion will be paid by the Village. The finding of the third healthcare provider is final and binding upon both parties.

F. In the event a husband and wife are both employed by the Village, and either or both request leave due to the birth or placement with the employees of a child (bonding leave), the aggregate number of workweeks of family and medical leave to which both employees are entitled shall be limited to a cumulative twelve (12) workweeks during the applicable twelve (12) month period. In other words, a cumulative total of twelve (12) weeks of bonding leave is available to the parents of a child. The leave may be used by one parent or split between both parents.

G. Intermittent/Reduced Leave

1. Leave due to the serious health condition of the employee or the employee's spouse, child, or parent may be taken intermittently or on a reduced leave schedule when medically necessary. The Village may require an employee who takes leave in this manner for planned medical treatments to transfer temporarily to an alternative position which has equivalent pay and benefits and better accommodates the recurring periods of leave.
2. The taking of leave intermittently or on a reduced leave schedule will not result in a reduction in the total amount of leave to which the employee is entitled in accordance with this policy.
3. Leave due to the birth or placement with the employee of a child may not be taken on an intermittent or reduced leave schedule.

H. It will not be considered a break in service when an employee takes leave in accordance with this policy, provided the employee returns to work at the expiration of the leave period. However, an employee is not entitled to the accrual of any other employment benefits that would have accrued if not for taking of leave.

I. An eligible employee who takes leave in accordance with this policy shall, upon return from such leave, be restored to the position held by the employee when the leave commenced, or to a similar position of equivalent pay, benefits, and other terms and conditions of employment. The Village will require the employee's physician to certify that the employee is able to resume work as a condition of return to employment.

J. During any period that an eligible employee takes family and medical leave, the Village will maintain the employee's group health insurance as if the employee was not on leave. The employee will be responsible for paying the employee's share of the health insurance costs during the leave. The Village's obligation to maintain the employee's insurance shall cease if the employee is more than thirty (30) days late in tendering his or her share of the premium, unless COBRA has been elected by the employee. In such a case, the employer shall provide the employee written notice by mail fifteen (15) days prior to ceasing the premium payment.

K. Failure to Return

1. If the employee fails to return from the leave, the employee shall reimburse the Village for the total insurance premium paid by the Village unless the failure to return is due to:
  - a. Continuation, recurrence, or onset of a serious health condition; or
  - b. Other circumstances beyond the employee's control.

In such cases, the Village may require medical certification. If an employee fails to provide certification or an adequate excuse, the employee shall be liable for the total insurance premium paid by the Village.

2. If an employee does not report to work or request and receive further approved leave after the applicable family and medical leave expires, the employee will be absent without leave and may be subject to disciplinary action.

L. Family and medical leave determination will be required for employees exceeding five (5) consecutive workdays of leave due to a qualifying event.

M. Upon requesting family and medical leave, or when it has been determined by the Village that an employee is eligible for family and medical leave, such employee will receive a written notice from the Village outlining the employee's rights and obligations (Form C).

N. Family and Medical Leave Definitions

1. Parent: the biological parent or person standing in place of a parent (*in loco parentis*) to the employee when the employee was a child. "In-laws" are not included.
2. Child: a biological, adopted, foster, or stepchild; a legal ward; or a child of a person who is 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.
3. Serious Health Condition: an illness, injury, impairment, or physical or mental condition which involves inpatient care or continuing treatment.
4. Continuing Treatment: continuing treatment by a healthcare provider which includes at least one (1) of the following:
  - a. A period of incapacity for more than three (3) consecutive days which requires subsequent treatment relating to that condition on two (2) or more occasions or on one (1) occasion which results in a regimen of continuing treatment;
  - b. Incapacity due to pregnancy;
  - c. A period of incapacity or treatment due to a chronic serious health condition, which may be episodic but includes periodic visits to healthcare provider and continues over an extended period of time;
  - d. Any period of incapacity which is permanent or long-term, due to a condition for which treatment may not be effective; or

- e. Any period of absence due to receiving multiple treatments, e.g., after surgery, accident, or for a condition which, if left untreated, would result in absence of three (3) consecutive days.
- 6. Intermittent Leave: leave taken in separate blocks of time due to a single qualifying reason.
- 7. Reduced Leave Schedule: leave that reduces an employee's usual number of working hours per workweek or workday.

VILLAGE OF SPENCER

APPLICATION FOR  
FAMILY AND MEDICAL LEAVE

FORM A  
PAGE 1

Employee Name \_\_\_\_\_ Date \_\_\_\_\_

Leave Requested (Check One):

- \_\_\_\_\_ Due to birth of child of employee;
- \_\_\_\_\_ Due to placement of child with the employee for adoption/foster care;
- \_\_\_\_\_ In order to care for (name of person) \_\_\_\_\_  
(must be spouse, child, parent, or person "in loco parentis" to employee)  
who has the following serious health condition (state exact nature of  
health condition):  
\_\_\_\_\_  
\_\_\_\_\_

Beginning Date/Time of Leave: \_\_\_\_\_  
Ending Date/Time of Leave: \_\_\_\_\_  
Total Hours of Leave Requested: \_\_\_\_\_

**If leave is due to serious health condition of employee or member of immediate family,  
Form B, "Certification of Healthcare Provider" must be completed and attached hereto.**

I certify all statements herein to be complete and true. Falsification is cause for discipline up to  
and including termination of employment.

\_\_\_\_\_  
Signature of Employee

ADMINISTRATIVE ACTION

\_\_\_\_\_ Order second opinion to certification OR \_\_\_\_\_ Approved \_\_\_\_\_ Not Approved

Because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature \_\_\_\_\_

VILLAGE OF SPENCER

**CERTIFICATION OF HEALTHCARE PROVIDER**  
**(Family and Medical Leave Act of 1993)**

**FORM B**  
**PAGE 1**

1. Employee's Name: \_\_\_\_\_
2. Patient's Name (if different from employee): \_\_\_\_\_
3. The attached sheet describes what is meant by a "**serious health condition**" under the Family and Medical Leave Act. Does the patient's condition<sup>1</sup> qualify under any of the categories described? If so, please check the applicable category.  
  
(1)\_\_\_\_ (2)\_\_\_\_ (3)\_\_\_\_ (4)\_\_\_\_ (5)\_\_\_\_ (6)\_\_\_\_, or none of the above \_\_\_\_\_
4. Describe the **medical facts** which support your certification, including a brief statement as to how the medical facts meet the criteria of one of these categories:  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
5. a. State the approximate **date** the condition commenced, and the probable **duration** of the condition (and also the probable duration of the patient's present incapacity<sup>2</sup> if different):  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. Will it be necessary for the employee to take work only **intermittently or to work on a less than full schedule** as a result of the condition (including for treatment described in Item 6 below)?  
  
If yes, give the probable duration: \_\_\_\_\_

<sup>1</sup> Here and elsewhere on this form, the information sought relates **only** to the condition for which the employee is taking FMLA leave.

<sup>2</sup> "**Incapacity**," for purposes of FMLA, is defined to mean inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.



VILLAGE OF SPENCER

CERTIFICATION OF HEALTHCARE PROVIDER  
(Family and Medical Leave Act of 1993)

FORM B  
PAGE 2

- c. If the condition is a **chronic condition** (condition #4) or **pregnancy**, state whether the patient is presently incapacitated and the likely duration and frequency of **episodes of incapacity**:

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6. a. If additional **treatments** will be required for the condition, provide an estimate of the probable number of such treatments:

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If the patient will be absent from work or other daily activities because of **treatment** on an **intermittent** or **part-time** basis, also provide an estimate of the probable number of and intervals between such treatments, actual or estimated dates of treatment, if known, and period required for recover, if any:

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- b. If any of these treatments will be provided by **another provider of health services** (e.g. physical therapist), please state the nature of the treatments:

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- c. If a **regimen of continuing treatment** by the patient is required under your supervision, provide a general description of such regimen (e.g. prescription drugs, physical therapy requiring special equipment):

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VILLAGE OF SPENCER

CERTIFICATION OF HEALTHCARE PROVIDER  
(Family and Medical Leave Act of 1993)

FORM B  
PAGE 3

7. a. If a medical leave is required for the employee's **absence from work** because of the **employee's own condition** (including absences due to pregnancy or a chronic condition), is the employee **unable to perform** work of any kind?

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- b. If able to perform some work, is the employee **unable to perform any one or more of the essential functions of the employee's job** (the employee or the employer should supply you with information about the essential job function)?  
\_\_\_\_\_ If yes, please list the essential functions the employee is unable to perform.

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- c. If neither "a" nor "b" applies, is it necessary for the employee to be **absent from work for treatment**? \_\_\_\_\_

8. a. If leave is required to **care for a family member** of the employee with a serious health condition, **does the patient require assistance** for basic medical or personal needs or safety, or for transportation? \_\_\_\_\_

- b. If no, would the employee's presence to provide **psychological comfort** be beneficial to the patient or assist in the patient's recovery? \_\_\_\_\_

- c. If the patient will need care only **intermittently** or on a part-time basis, please indicate the probable duration of this need.

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\_\_\_\_\_  
(Signature of Healthcare Provider)

\_\_\_\_\_  
(Type of Practice)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Address)

VILLAGE OF SPENCER

**CERTIFICATION OF HEALTHCARE PROVIDER**  
**(Family and Medical Leave Act of 1993)**

**FORM B**  
**PAGE 4**

**To be completed by the employee needing family leave to care for a family member:**

State the care you will provide and an estimate of the period during which care will be provided, including a schedule if leave is to be taken intermittently, or if it will be necessary for you to work less than a full schedule:

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(Employee Signature)

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(Date)

## VILLAGE OF SPENCER

### CERTIFICATION OF HEALTHCARE PROVIDER (Family and Medical Leave Act of 1993)

FORM B  
PAGE 5

A "Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

1. **Hospital Care**

**Inpatient care** (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to such inpatient care.

2. **Absence Plus Treatment**

(a) A period of incapacity of **more than three consecutive calendar days** (including any subsequent treatment or period of incapacity relating to the same condition), that also involves:

- (1) **Treatment<sup>3</sup> two or more times** by a healthcare provider, by a nurse or physician's assistant under direct supervision of a healthcare provider, or by a provider of healthcare services (e.g., physical therapist) under orders of, or on referral by, a healthcare provider; or
- (2) **Treatment** by a healthcare provider on **at least one occasion** which results in a **regimen of continuing treatment<sup>4</sup>** under the supervision of the healthcare provider.

3. **Pregnancy**

Any period of incapacity due to **pregnancy**, or for **prenatal care**.

<sup>3</sup> Treatment includes examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

<sup>4</sup> A regimen of continuing treatment includes, for example, a course of prescription medication (e.g. antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition. A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a healthcare provider.

4. **Chronic Conditions Requiring Treatments**

A **chronic condition** which:

- (1) Requires **periodic visits** for treatment by a healthcare provider, or by a nurse or physician's assistant under direct supervision of a healthcare provider;
- (2) Continues over an **extended period of time** (including recurring episodes of a single underlying condition); and
- (3) May cause **episodic** rather than continuing period of incapacity<sup>2</sup> (e.g., asthma, diabetes, epilepsy, etc.)

5. **Permanent/Long-Term Conditions Requiring Supervision**

A period of **incapacity<sup>2</sup>** which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member must be **under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider**. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

6. **Multiple Treatments (Non-Chronic Conditions)**

Any period of absence to receive **multiple treatments** (including any period of recovery therefrom) by a healthcare provider or by a provider of healthcare services under orders of, or on referral by, a healthcare provider, either for **restorative surgery** after an accident or other injury, or for a condition that **would likely result in a period of incapacity<sup>2</sup> of more than three consecutive calendar days in the absence of medical intervention or treatment**, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

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VILLAGE'S WRITTEN NOTICE OF  
EMPLOYEE'S RIGHTS AND OBLIGATIONS

FORM C  
PAGE 1

Name of Employee \_\_\_\_\_

Re: Family and Medical Leave

Dear \_\_\_\_\_ (employee):

On \_\_\_\_\_ (date), you notified us of your need to take family medical leave due to:

\_\_\_\_\_ the birth of your child, or the placement of a child with you for adoption or foster care; or

\_\_\_\_\_ a serious health condition that makes you unable to perform the essential functions of your job; or

\_\_\_\_\_ a serious health condition affecting your ☐ spouse, ☐ child, ☐ parent, for which you are needed to provide care.

You notified us that you need this leave beginning on \_\_\_\_\_ (date) and that you expect leave to continue until on or about \_\_\_\_\_ (date).

Except as explained below, you have a right under the Family and Medical Leave Act (FMLA) for up to twelve (12) weeks of unpaid leave in a twelve (12) month period for the reasons listed above. Also, your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work, and you must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from leave. If you do not return to work following FML for a reason other than (1) the continuation, recurrence, or onset of a serious health condition that would entitle you to FML, or (2) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FML.

This is to inform you that (Check appropriate boxes, explain where indicated):

1. You are ☐ eligible ☐ not eligible for leave under the FMLA.
2. The requested leave ☐ will ☐ will not be counted against your annual FML entitlement.
3. You ☐ will ☐ will not be required to furnish medical certification of a serious health condition. If required, you must furnish certification by \_\_\_\_\_ (date) (must be at least fifteen [15] days after you are

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**VILLAGE'S WRITTEN NOTICE OF  
EMPLOYEE'S RIGHTS AND OBLIGATIONS**

**FORM C  
PAGE 2**

notified of this requirement), or we may delay the commencement of your leave until the certification is submitted.

4. You will be required to substitute accrued paid leave for unpaid FML, if applicable. If paid leave will be used, the following conditions will apply:

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5. (a) If you normally pay a portion of the premiums for your health insurance, these payments will continue during the period of FML. Arrangements for payment have been discussed with you, and it is agreed that you will make premium payments as follows (Set forth dates, e.g., the 10<sup>th</sup> day of each month, or pay periods, etc., that specifically cover the agreement with the employee):

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- (b) You have a minimum thirty (30) day (or indicate longer period if applicable) grace period in which to make premium payments. If payment is not made timely, your group health insurance may be canceled, provided we notify you in writing at least fifteen (15) days before the date that your health coverage will lapse.

6. You will be required to present a fitness-for-duty certificate prior to being restored to employment. If such certification is required but not received, your return to work may be delayed until the certification is provided.

7. (a) You ☐ are ☐ are not a "key employee" as described in § 825.218 of the FMLA regulations, or ☐ are ☐ are not covered by the provisions of the FMLA as described in 29 U.S.C. 203(c)(2)(c). If you are a "key employee," restoration to employment may be denied following FML on the grounds that such restoration will cause substantial and grievous economic injury to us.

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VILLAGE'S WRITTEN NOTICE OF  
EMPLOYEE'S RIGHTS AND OBLIGATIONS

FORM C  
PAGE 3

- (b) We ☐ have ☐ have not determined that restoring you to employment at the conclusion of FML will cause substantial and grievous economic harm to us. (Explain (a) and/or (b) below. See § 825.219 of the FMLA regulations.)

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8. While on leave, you ☐ will ☐ will not be required to furnish us with periodic reports every \_\_\_\_\_ (indicate interval of periodic reports, as appropriate for the particular leave situation) of your status and intent to return to work (See § 825.309 of the FMLA regulations). If the circumstances of your leave change and you are able to return to work earlier than the date indicated on page 2 of this form, you ☐ will ☐ will not be required to notify us at least two (2) work days prior to the date you intend to report for work.

9. You will be required to furnish recertification related to a serious health condition. (Explain below, if necessary, including the interval between certifications as prescribed in § 825.308 of the FMLA regulations.)

If you have any questions, please contact \_\_\_\_\_  
at \_\_\_\_\_ (phone number).

\_\_\_\_\_  
Signature for the Village of Spencer, Ohio