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This sample provision applies to employers with more than 100 employees and incorporates the new obligations under the FMLA Regulations effective January 16, 2009 and the NDAA. Such employers must comply with both the federal FMLA and the Hawai'i Family Leave Act. Where there is a conflict between the laws, the more generous provision applies. Where coverage is the same, both leaves apply and are used contiguously. As with all model forms, this form should not be used without review by your employment law counsel. Please contact your Torkildson Katz attorney for further assistance.

MODEL FAMILY LEAVE POLICY

A. Reasons for Leave

Upon proper notification, eligible employees may take unpaid Family Leave for absences due to any of the following reasons:

1. The birth or adoption of a child;
2. Placement of a child with you for foster care;
3. Your own serious health condition that you need care for;
4. A serious health condition affecting your spouse, child or parent, for whom you are needed to provide care;
5. A serious health condition affecting your reciprocal beneficiary, grandparent, grandparent-in-law or parent-in-law, for whom you are needed to provide care, however, no more than four (4) weeks of leave may be taken for these reasons;
6. A serious illness or injury suffered while on active duty of a spouse, son, daughter, parent or next of kin for whom you are needed to provide care (See Section D below);
or
7. A qualifying exigency while your spouse, son, daughter or parent (the "covered military member") is on active duty or call to active duty status in support of a contingency operation for one or more of the following reasons: short notice of deployment of seven (7) days or less, to attend military events and related activities; to arrange childcare and school activities; to make financial and legal arrangements; to receive counseling (provided by

someone other than a health-care provider); for rest and recuperation (leave limited to 5 days for each instance); to attend post-deployment official ceremonies within 90 days of termination of service or handle matters relating to the death of a covered military member; or other events which arise out of the covered military member's active duty or call to active duty status subject to agreement with the employer as to duration and timing (See Section E below).

B. Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three (3) consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

C. Eligibility Standards and Length of Leave

If you have been employed by the Company for at least six (6) consecutive months, you are eligible to take up to four (4) weeks of family leave each calendar year [not to exceed four (4) weeks in any calendar/fiscal year/anniversary year/rolling 12-month period] for reasons 1, 4 and 5 above (but not reasons 2, 3, 6 or 7).

If you have been employed by the Company for twelve (12) months within the past seven (7) years, have worked at least 1,250 hours during the twelve-month period preceding the start of leave, and report to work within a seventy-five (75) mile radius of at least fifty (50) co-employees, you may take up to twelve (12) weeks of unpaid family leave during each [calendar/fiscal year/anniversary year/rolling 12-month period], for reasons 1, 2, 3, 4 and 7 but not reason 5; and up to 26 weeks for reason 6.

No leave under this policy will be granted unless your length of service meets one of the above eligibility standards.

If your leave is for a reason under 1, 4 or 5, you may elect to substitute accrued paid leave for unpaid leave. Unless you advise us that you choose not to use accrued paid leave during the first four (4) weeks of such leave, we will apply your vacation/PTO first, then any available sick leave up to ten (10) days. If you want to use your sick leave first, you must advise us as soon as possible but before your leave ends. For reasons 2, 3, 6 and 7, or after you have used four (4) weeks of leave for reasons 1, 4 and 5, we will require that you substitute applicable accrued paid leave for unpaid FMLA leave. If paid leave will be used, the normal procedures

and policy limitations for applying for, supporting and using paid leave will apply. Use of paid leave incorporates the requirements for completion of adequate support for the leave, *[optional: and this Company has adopted the family leave certification form as the format to support a request to use paid leave that has not been prearranged.]* The Company will also allow you to use any applicable accrued paid leave for any absence during which payments are received from temporary disability plans such as TDI or Workers' Compensation to supplement such wage loss benefits to make up the difference between regular compensation and the insured benefit.

Any paid or unpaid leave (*i.e.*, workers' compensation, temporary disability, sick leave, and personal leave) taken that qualifies as leave under this policy will be counted towards satisfying any applicable leave entitlement. Leave allowed under both eligibility standards will be counted toward the employee's entitlement under both standards.

To minimize disruption to the classroom, federal law established special rules for teachers and other instructional staff who request intermittent leave, leave on a reduced leave schedule, or leave near the end of a semester:

- *requests must be medically necessary.*
- *leave absences representing more than 20% of the period over which the leave extends may be required by the School to either:*
 - *take continuous leave for the entire treatment period; or*
 - *temporarily transfer to another available job with equivalent pay and benefits which better accommodates recurring periods of leave.*

(For example, a teacher who normally works five days a week and needs to take two days of FML per week would be out of the classroom for two-fifths or 40% of the time and may be subject to these special rules.) The School may require eligible teachers and other instructional staff to extend leave through the end of the semester if he or she would otherwise have returned within the last three weeks of the semester, depending on the date that the leave commenced and the duration of the leave.

Eligible spouses who are both employed by the Company are entitled to a combined total of twelve (12) weeks of leave (rather than twelve (12) weeks each) for the birth or adoption of a child or to care for a parent with a serious health condition; provided that each eligible spouse is entitled to a minimum of four (4) weeks of individual leave.

D. Servicemember Family Leave

Eligible employees may take up to twenty-six (26) weeks of leave to care for a “covered servicemember” with a injury or illness incurred by the member in the line of duty while on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.

“Covered servicemember” means a member of the Armed Forces, including a member of the National Guard or Reserves, 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.”

Servicemember Family Leave may be taken by an eligible employee who is the spouse, son, daughter, parent, or next of kin of a “covered servicemember.”

Next of kin means the nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin. Alternatively, where a covered servicemember has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered servicemember's next of kin. The Company may require an employee complete a certification unless the leave is pursuant to an “invitational travel order” (ITO) or “invitational travel authorization” (ITA). The Company may also require the employee to provide confirmation of covered family relationship to the covered servicemember.

Servicemember Family Leave runs concurrent with other leave entitlements, may be taken on an intermittent or reduced leave basis, and when combined with other FMLA-qualifying leave, may not exceed twenty-six (26) workweeks in a single twelve (12) month period. Certification of servicemember’s health care provider may be required in support of request for leave. A husband and wife who both work for the same employer and who are entitled to servicemember family leave are entitled to an aggregate of twenty-six (26) weeks of leave.

E. Qualifying Exigency Leave

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on active duty as either a member of the reserve components or a retired member of the Regular Armed Forces or Reserve may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service including the reasons stated above under Section A.7. A call to active duty refers to a federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States. An employee whose family member is on active duty or call to active duty status in support of a contingency operation as a member of the Regular Armed Forces is not eligible to take leave because of a qualifying exigency. The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave, except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period. Employees requesting this type of FMLA leave must provide proof of the qualifying family member's call-up or active military service such as active duty orders or other documentation issued by the military and the request must be supported by a certification from the employee of the reason for the leave and other information.

F. Return to Work

The Company will attempt to restore you to the position held when the leave commenced or to an equivalent position with equivalent pay and benefits, if possible. If you are a "key employee" (a salaried employee who is among the highest paid ten percent (10%) of the Company's employees), and keeping the job open for you would result in substantial economic injury to the Company, the Company can deny your reinstatement if leave is taken for your own serious health condition or if more than four (4) weeks of leave is taken in a given calendar year. Key employees will be notified, at the time they submit their request for leave, of the possibility that they will be denied restoration to employment and provided a reasonable period of time to return to work without jeopardizing reinstatement. Key employees who elect to take leave may request reinstatement at the conclusion of the leave period, at which time the Company will determine whether reinstatement should be denied because of substantial economic injury to the Company.

G. Intermittent Leave

Leave for your own serious health condition or of a family member listed in Section A.4 may be taken on an intermittent or reduced leave only if medically necessary. Leave for reason under Section A.5 may be taken on an intermittent or reduced leave schedule for the first four (4) weeks of such leave, thereafter only if medically necessary. Intermittent or reduced leave upon the birth, placement for foster care, or adoption of a child is not permitted beyond the first four (4) weeks of leave unless advance written approval is obtained from the [*Human Resources Department*].

The Company may require you to transfer temporarily to an alternate position, which better accommodates recurring periods of absence or a part-time schedule due to planned medical treatment, provided that the position has equivalent pay and benefits. Transfers to accommodate your need for leave due to other conditions can be made based on mutual agreement.

H. Notifying the Company of Your Need for Leave

When the need for leave for your own serious health condition is foreseeable (for example, planned medical treatment) you must provide at least thirty-days (30) advance notice and make efforts to schedule leave so as not to disrupt Company operations. You should complete the applicable company leave form. You will be required to report periodically on your leave status and intention to return to work.

If the need for leave is unforeseeable or due to the serious health condition of a family member (for example, because of a medical emergency), you must notify the Company of your need to take leave as soon as possible. Failure to provide notice of your need for leave may result in your absence not being protected, delay your entitlement to leave and subject you to discipline up to and including termination in accordance with the Company's regular attendance standards.

I. Required Medical Certification

The Company requires medical certification, completed by a health care provider on a company-provided form, to support a claim for leave. Failure to return a completed certification form within the time provided may delay the FMLA from protecting your absence and your employment may be subject to termination in accordance with the Company's regular attendance standards.

At its discretion, the Company may require a second medical opinion at its own expense. If the first and second opinions differ, the Company, at its own expense, may require the binding opinion of a third health care provider, approved jointly by the Company and the employee. If the leave is taken for your own serious health condition, the Company may also require periodic recertifications.

For leave due to the birth of a child, the Company may require reasonable documentation of the family relationship such as a medical certification issued by a health care provider, the family court, or certification of the placement of the child for adoption with the employee issued by a recognized adoption agency, the attorney handling the adoption, or by the individual officially designated by the attorney handling the adoption, or by the individual officially designated by the birth parent to select and approve the adoptive family.

As a condition of returning to work, the Company may require you to obtain and present certification from your health care provider stating that you are able to return to work *and perform your essential job functions as described in your position description* if your leave was due to your

own serious health condition. Reinstatement may be delayed until you submit a fitness-for-duty certification.

J. Maintenance of Group Health Insurance

The Company will continue to pay its share of the premium for group health insurance coverage provided to the employee and any dependents for the duration of family leave. Employees are expected to make arrangements to pay for the employee's share or to continue other types of benefit coverage before taking leave.

K. Employee's Responsibilities

It is your responsibility to timely complete your leave request forms to assure reinstatement and benefit continuation for the duration of such approved leave. If you are unable to return to work at the end of any approved leave, it is your responsibility to timely request additional leave or notify us of your intention not to return to work. Failure to obtain approval for additional leave may result in loss of your employment.

Authorized leave taken under this policy will not be used to determine whether an employee has excessive absenteeism. However, leave taken under this policy may result in loss of performance related benefits such as perfect attendance bonuses. Employees requesting family leave or taking family leave under this policy will not be retaliated against in violation of applicable law. For further information or leave request forms, or to report any concerns, please contact the [*Human Resources/Benefits Manager*].

L. Federal FMLA Enforcement

An employee who believes his or her rights under the FMLA have been violated may file a complaint with the U.S. Department of Labor or may bring a private lawsuit. FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or federal law or collective bargaining agreement which provides greater family or medical leave rights.