



TACOMA HOUSING AUTHORITY

Policy No.	HR-35.15
Policy	Family and Medical Leave
Date	October 30, 2009

1. Purpose

Recognizing the importance of family and out of concern for the well being of its employees, THA's family and medical leave programs enables employees to take time off, under certain conditions, for health reasons or to care for family members. Nothing in this policy modifies or supersedes any federal or state law or collective bargaining agreement that may provide greater entitlements to medical or family leave than those set forth in this policy. In the event of any conflict between this policy and (1) any state or federal law or (2) any then applicable collective bargaining agreement, THA will follow the applicable legal requirement or collective bargaining agreement.

Non-medical related and family leave options are described under *THA Policy HR-35.01 Time Away from THA*.

2. Sources for Policy

- ▶ *Family Medical Leave Act, 29 U.S.C. § 2601 et seq, 29 C.F.R. § 825 (FMLA)*
- ▶ *Family Leave Act, RCW 49.78 as amended by SSB 6185, 2006*
- ▶ *Family Care Act, RCW 49.12.265, WAC 296-130*
- ▶ *Leave for Victims of Domestic Violence, Sexual Assault, & Stalking, RCW 49.76*
- ▶ *Leave for Spouses of Deployed Military Personnel, RCW 49.77*
- ▶ *Pregnancy, Childbirth, and Pregnancy Related Conditions, RCW 49.60, WAC 162-30-020*
- ▶ *National Defense Authorization Act for Fiscal Year 2010*

3. Scope of Policy

This policy applies to all "eligible employees" as defined by the sources noted above.

4. Who is Responsible for Implementing Policy

Who	Responsibilities
All Staff	<ul style="list-style-type: none"> ▶ to be sufficiently familiar with and abide by this policy and appropriate Collective Bargaining Agreements; ▶ to use leave options appropriately and honestly and for their intended purpose; ▶ to provide the appropriate notices, forms and/or certifications required by the policy governing the use of appropriate leave options.
Supervisor	<ul style="list-style-type: none"> ▶ to be sufficiently familiar with this policy and appropriate Collective Bargaining Agreements and to consistently apply this policy to all staff members; ▶ to support staff who use available leave for appropriate purposes to achieve a healthy work and life balance

	<ul style="list-style-type: none"> ▶ to authorize or deny leave options based upon legal requirements and the best interest of the employee, the department and agency; ▶ to contact the Human Resources Department with questions regarding leave under this policy
Director of Finance & Administration	<ul style="list-style-type: none"> ▶ to be sufficiently familiar with this policy and appropriate Collective Bargaining Agreements and to consistently apply this policy to all staff members; ▶ to make all necessary adjustments in payroll and other activities and records resulting from employee use of benefits.
Human Resources Department	<ul style="list-style-type: none"> ▶ to be sufficiently familiar with this policy and appropriate Collective Bargaining Agreements and to consistently apply this policy to all staff members; ▶ to inform all new employees of these leave options; ▶ to administer all leave policies and options; ▶ to assist employees and supervisors in understanding and implementing leave options.

5. Definitions

[No entry]

6. Forms Associated with this Policy

	Employee Rights and Responsibilities Under FMLA
	WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition
	WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition
	WH-381 Notice of Eligibility and Rights and Responsibilities-FMLA
	WH-382 Designation Notice-FMLA
	WH-384 Certification of Qualifying Exigency for Military Family Leave
	WH-385 Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave
<i>THA Form HR-35.15(10)</i>	Disability Benefit Options

7. Policy

7.1 Family and Medical Leave

7.1.1 Eligibility

To be eligible for family and medical leave, an employee must have been employed by THA for at least twelve (12) months, must have worked at least one thousand, two hundred and fifty (1,250) hours in the preceding 12 months, and must work at a location where at least fifty (50) employees are employed by THA within seventy-five (75) miles.

7.1.2 Leave Entitlement

An eligible employee may request up to twelve (12) workweeks of FMLA leave per “leave year” for one or more of the following reasons:

- (a) To care for his or her child upon birth, or because of a child’s placement with the employee for adoption or foster care;
- (b) To care for a spouse, domestic partner, son, daughter or parent who has a serious health condition;
- (c) To care for self, if the employee has a serious health condition, including a serious health condition that makes the employee unable to perform the essential functions of the position (including incapacity due to pregnancy, prenatal medical care or childbirth);
or
- (d) For a “qualifying exigency” arising out of the fact that the employee’s spouse, domestic partner, son, daughter, or parent is a covered military member who is on active duty, or has been notified of an impending call to active duty in support of a contingency operation. Covered military members are members of the National Guard or Reserves, and certain retired military service personnel, who have been called to active duty or notified of an impending call to active duty. Qualifying exigencies are generally activities related to the active duty or call to duty, including attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions and attending post-deployment reintegration briefings.

THA defines leave year as the rolling twelve-month period measured backward from the date an employee uses any FMLA leave. FMLA leave for birth or placement for adoption or foster care must conclude within twelve (12) months of the birth or placement. In addition, spouses or domestic partners employed by THA are jointly entitled to a combined leave of twelve (12) workweeks of family leave for the birth or placement of a child for adoption or foster care, or to care for a parent with a serious health condition. Each spouse or domestic partner is, however, eligible for the full twelve (12) weeks of leave in the twelve (12) month leave period to care for a child or spouse or domestic partner with a serious health condition, or for either employee’s own serious health condition.

An eligible employee may also take up to twenty-six (26) weeks of leave during a single twelve (12) month period to care for an injured service member who is the employee's spouse, domestic partner, parent, child or next of kin. A covered service member is a current member of the Armed Forces, including National Guard or Reserves members, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties and for which the service member is undergoing medical treatment, recuperation or therapy; or is in outpatient status; or is on the temporary disability retired list. For purposes of this kind of leave, the twelve (12) month period begins with the first day the employee takes leave. The combined total of leave for all purposes described in this policy may not exceed 26 weeks in the applicable leave year.

7.1.3 Serious Health Condition

A serious health condition is an illness, injury, impairment or physical or mental condition that involves:

- Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical care facility;
- A period of incapacity of more than three consecutive, full calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider;
- A period of incapacity due to pregnancy or for prenatal care;
- A period of incapacity or treatment due to a chronic serious health condition, for a permanent or long-term condition for which treatment may not be effective, or to receive multiple treatments for restorative surgery after an accident or injury or for a condition that would likely result in an incapacity of more than three full, consecutive calendar days in the absence of medical treatment (e.g., chemotherapy for cancer or dialysis for kidney disease).

7.1.4 Intermittent or Reduced Work Schedule Leave

In certain circumstances, eligible employees may take FMLA leave intermittently (for example, in smaller blocks of time) or by reducing their work schedule. If the FMLA leave is because of the employee's own serious health condition or to care for a family member, the employee may take the leave intermittently or on a reduced work schedule if it is medically necessary. Eligible employees may also take FMLA leave on an intermittent or reduced schedule basis when necessary because of a qualifying exigency arising from a family member's military service. If FMLA leave is to care for a child after the birth or placement for adoption or foster care, employees may take their FMLA leave intermittently or on a reduced work schedule only with THA's permission. Where intermittent

leave or reduced-schedule leave is needed for planned medical treatment, an employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly THA's operations. Where an employee needs intermittent or reduced-schedule leave based on planned medical treatment, THA may transfer the employee to an alternative position with equivalent pay and benefits that can better accommodate such recurring leave.

7.1.5 Notice and Certification

A notice entitled "Employee Rights and Responsibilities Under the Family and Medical Leave Act" is posted on the Share drive under 10.15.10 Human Resources-35 Time Away From Work and is provided to employees upon hire.

Employees who want to take FMLA ordinarily must provide this notice to THA at least thirty (30) days' in advance of the need for leave, if the need for leave is foreseeable. If thirty (30) days' advance notice is not possible, notice must be provided as soon as practicable (which is generally the same day or next business day after the need for leave becomes known). Absent unusual circumstances, employees are required to follow THA's regular procedural requirements for requested leave when requesting FMLA leave. When requesting leave, employees must provide sufficient information for THA to determine whether the leave may be FMLA-qualifying, and the anticipated timing and duration of requested leave. Employees must also inform THA if the requested leave is for a reason for which FMLA leave was previously taken or certified.

When leave is requested in connection with planned medical treatment, the employee must make a reasonable effort to schedule treatment in order to prevent disruptions to THA operations.

In addition, employees who need leave for their own or a family member's serious health condition must provide medical certification from a health care provider of the serious health condition. THA may require a second or third opinion (at THA expense), periodic recertifications of the serious health condition and, when the leave is for an employee's own serious health condition, a certification that the employee is fit to return to work. Employees who need leave for a qualifying exigency arising from a family member's military leave must provide a certification confirming the need for leave.

THA may delay leave to employees who do not provide proper advance notice of the foreseeable need for leave. THA also may delay or deny approval of leave for lack of proper certification establishing the need for leave.

7.1.6 Continuation of Pay and Benefits

FMLA leave is unpaid leave. However, employees are required to use any accrued paid leave available to them as part of their twelve (12) weeks of

FMLA leave. Except as provided in Section 7.3 below, employees on FMLA leave must first use and exhaust all accrued sick leave and then use and exhaust all accrued vacation leave. Any remaining leave will be unpaid.

For leave under this family and medical leave policy, THA will continue to pay the employer's portion of health insurance premiums where the applicable regulation requires that the employer maintain benefits. The employee must continue to pay his/her share of insurance premiums, if any. Failure of the employee to pay his/her portion of the premium may result in cancellation of health insurance. Under certain circumstances, if an employee fails to return to work at the end of the leave, the employee may be responsible to pay back THA for the employer portion of the health insurance premiums. Leaves such as vacation and sick leave will continue to accrue during paid leave, but not during unpaid leave.

7.1.7 Job Restoration Upon Return From Leave

Upon return from family and medical leave, an employee will be entitled to return to the employee's former position or a position with equivalent pay, benefits and conditions of employment, unless unusual circumstances have arisen (e.g., the employee's position was eliminated for reasons unrelated to the leave). If the employee chooses not to return to work for any reason, the employee must notify THA as soon as possible.

7.1.8 Leave for Pregnancy Disability and to Care for Newborn

In addition to leave under the federal FMLA described above, state law provides certain additional leave rights in connection with pregnancy-related disability and to care for a newborn. Regardless of whether an employee is eligible for FMLA leave, she is entitled Pregnancy Disability leave for the period of time that she is temporarily disabled because of pregnancy or childbirth. Medical certification may be required to confirm the need for leave. If the employee is eligible for FMLA leave, the Pregnancy Disability leave will run concurrently with FMLA leave. Pregnancy Disability leave is unpaid and health benefits are not automatically continued (unless the employee is also eligible for FMLA leave).

The Washington Family Leave Act (FLA) provides certain additional leave benefits to care for a newborn. The FLA largely mirrors the FMLA, with the same eligibility standards and entitlement to twelve (12) weeks of leave for family and medical reasons. In most situations, leave under the FLA runs concurrently with FMLA leave. However, the FLA leave does not run concurrently with any leave taken for Pregnancy Disability leave; this affords an employee time off to care for her newborn once she has recovered from any disability because of pregnancy or childbirth. For example, an FMLA and FLA-eligible employee works up to her delivery date, and needs six weeks of Pregnancy Disability leave to recover from childbirth. This six-week period is also covered by FMLA leave. At that point, where the employee is no longer disabled from childbirth, the

employee also has up to twelve (12) additional weeks of FLA leave available to care for the newborn. The remaining six (6) weeks of FMLA leave would run concurrently with the FLA leave. Thus, the total leave entitlement in this case would be eighteen (18) weeks: six (6) weeks of Pregnancy Disability leave (running concurrently with the first six (6) weeks of FMLA leave) followed by twelve (12) weeks of FLA leave (running concurrently with the remaining six weeks of FMLA leave).

7.2 Short and Long Term Disability During FMLA Leave

Eligible non-union and OPEIU employees may be eligible for short and/or long term disability during their FMLA or other medical leave. Trades Council employees may be eligible for short term disability during their FMLA or other medical leave. Employees should consult with the HR department for more information.

7.3 Family Care/Use of Accrued Leave to Care for Sick Family Member

Consistent with the Washington Family Care Act, employees may use their choice of any accrued leave that they have available for their own use in order to care for their child, spouse, domestic partner, parent, parent-in-law, domestic partner, or grandparent as described below.

An employee may use available paid time off to care for his/her child where the child has a health condition requiring treatment or supervision or where the child needs preventive care (such as medical, dental, optical or immunization services) and requires the parent's presence to authorize treatment.

An employee may use available paid time off when a spouse, domestic partner, parent, parent-in-law, or grandparent has a "serious health condition or an emergency condition." In general, these are conditions:

- Requiring an overnight stay in a hospital or other medical-care facility;
- Resulting in a period of incapacity or treatment or recovery following inpatient care;
- Involving continuing treatment under the care of a health care services provider that includes any period of incapacity to work or attend to regular daily activities; or
- Involving an emergency (*i.e.*, demanding immediate action).

Where the need for family care leave is unexpected, THA understands that advance approval of the use of leave (as is required for certain kinds of accrued leave) may not be possible. Employees are required, however, to notify their supervisor of the need to take time off to care for a family member as soon as the need for leave becomes known. THA reserves the right to require verification or documentation confirming that a family member has or has had a "serious or emergency" health condition when available leave is used to care for that family member.

7.4 Domestic Violence/Sexual Assault Leave

This leave is available to employees who are victims of domestic violence, sexual assault, or stalking. It is also available to employees with a family member (child, spouse, domestic partner, parent, parent-in-law, grandparent), or person with whom the employee has a dating relationship who is a victim of domestic violence, sexual assault, or stalking. The leave may be taken in blocks, intermittently, or on a reduced leave schedule. The amount of leave that an employee may take is limited to a “reasonable” amount. Domestic violence/sexual assault leave is unpaid, although an employee may elect to use the employee’s accrued paid leave (e.g., vacation, sick leave, compensatory time) in connection with such leave.

Domestic Violence/Sexual Assault Leave may be taken for the following purposes:

- To seek law enforcement or legal assistance or to prepare for or participate in any legal proceeding related to domestic violence, sexual assault, or stalking;
- To seek health care treatment for physical or mental injuries from domestic violence, sexual assault, or stalking, or attend to such health care treatment for a family member;
- To obtain (or assist a family member in obtaining) services from a domestic violence shelter, rape crisis center, or other social services related to domestic violence, sexual assault or stalking;
- To obtain (or assist a family member in obtaining) mental health counseling related to domestic violence, sexual assault, or stalking; or
- To participate in safety planning, to temporarily or permanently relocate, or to take other actions to increase the safety of the employee or family member relating to domestic violence, sexual assault, or stalking.

When possible, employees must give advance notice of the intention to take leave. If advance notice is not possible, employees (or their designees) must give notice of the need for this leave no later than the end of the first day the employee takes the leave. THA may require verification to support the need for the leave. Depending on the situation, verification can take the form of police reports, court documents, or the employee's own written statement of the need for the leave. Except where disclosure is authorized or required by law, THA will maintain confidentiality of all information provided by the employee in conjunction with Domestic Violence/Sexual Assault Leave.

7.5 Military Leave of Absence Leave For Spouses Of Military Personnel (Non-FMLA)

During a period of military conflict declared by the President or Congress, an employee who is the spouse of a member of the Armed Forces, National Guard or Reserves is entitled to up to 15 days of unpaid leave while his/her spouse is on

leave from deployment, or before and up to deployment. (This reason for leave may also be covered under FMLA leave for a qualifying exigency, although an employee need not meet the more stringent FMLA eligibility requirements in order to take this spousal military leave.) The purpose of this leave is to support the families of military personnel serving in military conflicts by permitting them to spend time together before a family member is deployed or while the family member is on leave from a deployment. An employee must work an average of 20 hours per week to be eligible for this family military leave.

An employee who seeks to take family military leave must provide THA with notice of his/her intent to take leave within five business days of receiving official notice that the employee's spouse will be on leave or of an impending call to active duty. The employee may use available accrued leave for any part of this family military leave.

Note: On October 28, 2009, President Obama signed the National Defense Authorization Act for Fiscal Year 2010 into law. The bill includes provisions amending the Family and Medical Leave Act (FMLA) military family leave entitlements, expanding qualifying exigency leave and caregiver leave eligibility.

Qualifying exigency leave will now cover family members of the regular Armed Forces, in addition to current coverage of family members of the Guard or Reserves. It will also cover family members of individuals deployed to a foreign country, removing the current requirement that National Guard or Reserve members be serving "in support of a contingency operation."

Military caregiver leave has also been expanded so it may be used by family members to care for veterans undergoing treatment, recuperation or therapy for an injury, as long as the veteran was a member of the Armed Forces, National Guard or Reserves within five years of requiring care. The bill also expands military caregiver leave so that employees may use it to care for a covered service member's serious injury or illness incurred because service on active duty aggravated an existing or preexisting injuries. Previously, law only allowed caregiver leave for serious illnesses or injuries incurred on active duty.

7.6 Sick Leave

7.6.1 Eligibility

Regular full-time employees accrue paid sick leave at the rate of eight (8) hours per calendar month of continuous employment. Regular part-time employees who are regularly scheduled to work twenty-four (24) or more hours per week accrue paid sick leave on a pro rata basis. Temporary employees are not eligible for paid sick leave benefits. Employees do not accrue sick leave benefits during a leave without pay. During their probationary period, newly hired employees accrue sick leave and are eligible to use their accrued sick leave during their probation. Sick leave accrues during employment without a maximum limit.

7.6.2 *Sick Leave Usage*

Sick leave is designed to protect against loss of income when a staff member becomes ill or medically disabled, when they have a scheduled medical appointment, or to care for an immediate family member.

Sick leave may be used for any of the following purposes:

- Personal illness or incapacity of the employee;
- Forced quarantine of the employee by a public health official;
- To care for the employee's dependant children under age 18 who are ill;
- To attend the birth of the employee's child;
- Use of a prescription drug that impairs job performance or safety;
- Medical or dental appointments of the employee or dependent children under the age of 18, when such appointments cannot reasonably be scheduled during off-duty time;
- For any purpose described in the Family Care policy set forth above.

Sick leave may be coordinated with certain other leaves (see, e.g., Family and Medical Leave policy above). Employees may be required to provide medical or other documentation to verify the appropriate use of sick leave. A doctor's note may be required when an employee is absent for three (3) or more consecutive days, or in other situations as deemed appropriate by THA (e.g., pattern absences on Fridays and/or Mondays). Excessive tardiness or absences (other than approved FMLA leave) may lead to disciplinary action up to and including termination.

7.6.3 *Sick Leave Cash-out*

Accrued but unused sick leave will be paid out upon separation from employment according to the *THA Policy HR-50.01 Employment Separation*.