

ORDINANCE NO. 6-2010

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HANOVER REPEALING SECTION 61-12.D. ENTITLED "FAMILY LEAVE POLICY." UNDER SECTION 61-12. ENTITLED "LEAVE OF ABSENCE." WITH THE INCLUSION OF A NEW SECTION 61-12.D. ENTITLED "FAMILY AND MEDICAL LEAVE." UNDER CHAPTER 61 OF THE CODE OF THE TOWNSHIP ENTITLED SALARIES AND COMPENSATION; PERSONNEL POLICIES

WHEREAS, in order to reflect changes in Federal and State law regarding family and medical leaves, it is the intention of the Township Committee to amend and supplement Section 61-12. entitled "Leaves of Absence." under Chapter 61 of the Code of the Township with the inclusion of new provisions.

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Hanover in the County of Morris and State of New Jersey as follows:

Section 1. Section 61-12.D. entitled "Family Leave Policy." under Section 61-12. entitled "Leave of Absence." Under Chapter 61 of the Code of the Township entitled Salaries and Compensation; Personnel Policies is hereby deleted and repealed in its entirety. In its place, a new Section 61-12.D. entitled "Family and Medical Leave" is hereby inserted in its place and stead as follows:

"D. Family and Medical Leave:

1. General Policy. There may be occasions when an employee requests to be temporarily relieved of his or her work responsibilities for family medical leave. In such instances, the Township will grant leaves of absence in accordance with the requirements of the federal Family and Medical Leave Act ("FMLA") and New Jersey Family Leave Act ("FLA"). Under the FMLA, eligible employees who request leave because of (i) the birth, adoption or placement of child in foster care with the employee; (ii) the employee's serious health condition; or (iii) the serious health condition of the spouse, child or parent of the employee, will be granted unpaid FMLA leave of up to twelve (12) weeks in any twelve (12) month period. Under the FLA, eligible employees who request leave because of (i) the birth or adoption of a child, or (ii) the serious health condition of the spouse, child or parent of the employee, will be granted family leave of up to twelve (12) weeks in any twenty-four (24) month period. Leave under either the FMLA or the FLA provides the employee with certain assurances of job security and continued employee benefits during the leave.

2. Eligibility. Full-time (and some part-time) employees may be eligible for leave if they meet the requirements set forth below:

(i) FMLA. Employees are eligible for FMLA leave if:

- (1) They have worked for the Township for at least 12 months; and
- (2) They have worked at least 1250 hours during the 12 month period immediately preceding the start of the requested leave.

(ii) FLA: Employees are eligible for FLA leave if:

- (1) They have worked for the Township for at least 12 months; and

- (2) They have worked at least 1000 hours during the 24 Month period immediately preceding the start of the requested leave.

3. Twelve (12) or Twenty-Four (24) Month Period. The Township will use a rolling twelve (12) or twenty-four (24) month period to measure eligibility for requested leave under either the FMLA or the FLA. This means that the 12 month period under the FMLA or the 24 month period under the FLA will be measured backwards from the date on which the leave is requested to commence.

4. FMLA Leave Entitlement VS. FLA Leave Entitlement:

(i) FMLA Leave may be taken for the following reasons:

- (1) The birth, adoption or placement in foster care of a child;
- (2) The employee's serious health condition; or
- (3) The serious health condition of the spouse, child or parent of the employee.

(ii) FLA Leave may be taken for the following reasons:

- (1) The birth or adoption of a child; or
- (2) The serious health condition of the spouse, child, domestic partner, civil union partner or parent of the employee.

If an employee requests leave that is covered by both the FMLA and the FLA, the leave simultaneously counts against the employee's entitlement under both acts. For example, if the employee requests leave for the birth of a child, such leave would be covered under both the FMLA and the FLA. The employee would therefore only be entitled to a total of 12 weeks of leave. If, however, the employee requests leave that is only covered by the FMLA, it shall not abridge the employee's right to request leave for reasons allowed under the FLA. This means that in certain limited circumstances, the employee may be entitled to up to twenty-four (24) weeks leave in a twelve (12) month period. For example, if the employee requests leave to care for his/her own serious health condition, such leave would only be covered by the FMLA. The employee could then request an additional 12 weeks for reasons allowed under the FLA, such as to care for a family member with a serious health condition.

5. **Definition of "Serious Health Condition":** An illness, injury impairment or physical or mental condition that involves:

- (i) inpatient care in a hospital, hospice or residential medical care facility, or
- (ii) continuing treatment by a health care provider

6. **Procedure:**

- (i) Notice. To the extent possible, advance written notice of a request for leave is required. When the need for leave is foreseeable, request for leave under this policy must be submitted in writing to the Department Head and the Township's Personnel Office at least thirty (30) days prior to the date on which the employee wishes to commence leave. Forms are available in the Township's Personnel Office for this purpose. If it is not possible to give thirty (30) days notice, then the employee must submit written notice as soon as is possible. When the leave is for a planned medical treatment, the employee should endeavor to schedule the leave so as not to unduly disrupt his or her work. Employees seeking an extension of approved leave time must submit their request to the Department Head and the Personnel Office at least one (1) week prior to the expiration of the approved portion of his or her leave.

- (ii) Medical Certification: Medical certification of the need for leave is required where the leave is due to the serious health condition of the employee or the employee's spouse, parent or child. The Township will provide the employee with the appropriate medical certification form to be completed by the health care provider of the employee or his/her spouse, parent or child. The Township may also require subsequent re-certifications on a reasonable basis. Failure to comply with the certification requirements may result in the delay or denial of leave.

If the Township has reason to doubt the validity of the medical certification provided by the employee, the Township may require a second medical certification, at the Township's expense. Such certification will be completed by the health care provider of the Township's choice. If the second opinion differs from the opinion in the original certification, the Township may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the information in the certification. The opinion of the third health care provider shall be final and binding on the Township and the employee.

7. Use of Accumulated Paid Leave: All accrued vacation, personal leave, sick days, family leave, compensatory time and other paid time off: must be used by the employee for all or part of the employee's twelve (12) week family and medical leave if the employee seeks to receive compensation while caring for his/her own medical condition. Once any accrued paid leave is used, the remainder of the twelve (12) week leave shall be unpaid. When an employee is out of work on temporary disability or receiving workers compensation benefits, his or her FMLA leave will run concurrently.

8. Maintenance of Benefits: While an employee is on leave, the Township will maintain its contributions to the employee's health insurance under the same terms as the plan in effect at the time the request is made, for a period of up to twelve (12) weeks, if the employee is enrolled in the Township's health care plan at the time the request for leave is made. If applicable, the employee will be responsible for making timely payment to the Township of his or her share of the premium cost. To the

extent the employee is still receiving a paycheck from the Township because of accrued paid leave, said premiums will be deducted from the employee's paycheck. If the employee is not receiving a paycheck from the Township during all or any portion of the leave, the employee shall make applicable premium payments in person or via mail to the Personnel Office by the 15th day of each month the employee is on leave. If the employee's premium payment becomes more than thirty (30) days overdue at any time during the leave, coverage will- be terminated by the Township. If the employee fails to return from leave, the employee will be required to repay the Township for its share of health insurance premiums paid for the employee during the leave, provided that the failure to return to work is not due to (i) the continuance, recurrence or onset of a serious health condition, or (ii) other circumstances beyond the employee's control.

9. **Accrual of Paid Time Off:** Vacation, personal leave, sick days and any other paid time-off does not accrue during any period of unpaid leave.

10. **Return to Work:** Except for employees in key positions as defined by the law (see below), upon the employee's return to work, an employee taking an approved leave under this policy will be restored to the same or an equivalent position as held prior to the leave, with equivalent pay and benefits (unless the employee is unable to perform the essential functions of that position, with or without reasonable accommodation). In order to be restored to the same or an equivalent position, the employee must return from leave on the agreed-upon date (including any approved extensions) and the entire leave must last no more than twelve (12) weeks. When an employee is returning from leave due to the employee's own serious health condition, the Township may require the employee to submit a medical certification of fitness-for-duty.

11. **Key Employee Exception:** The Township may deny job restoration to certain highly compensated "key" employees. The Township will endeavor to advise employees of their status as a "key" employee at the time they request leave. However, if the Township deems it necessary to deny job restoration to a key employee who is already out on leave, the Township will inform the employee of its intention to so designate the employee and will offer the employee the opportunity to return to work immediately.

12. **Intermittent or Reduced Leave Schedule:** Generally, FMLA leave or FLA leave will be taken in a lump sum (i.e., consecutive days off from work up to 12 weeks). However, FMLA leave may be taken intermittently, or on a reduced schedule, in situations involving the serious health condition of the employee or his/her spouse, domestic partner, civil union partner, parent or child, if medically necessary and supported by medical certification. If an employee requests an intermittent or reduced leave schedule for reasons that are foreseeable based upon planned medical treatment, the Township may, at its discretion, temporarily reassign the employee to another position with equivalent pay and benefits that will better meet the needs of the Township and the public (if the employee is qualified for the position and a vacancy exists).

Section 2. A new Section 61-12.E. entitled "New Jersey Paid Family Leave Insurance." Is hereby included as follows:

E. **New Jersey Paid Family Leave Insurance:** Employees who must care for a spouse, parent, child, civil union partner, or domestic partner ("family member") inflicted with a serious medical condition may be eligible for compensation from the State of New Jersey during the employee's time away from work. The Insurance program, administered by the State of New Jersey, is designed to assist in reducing the financial hardship individuals may suffer while away from work in order to care for a family member. The Township does not pay the employee while he/she is out

of work except during the employee's use of sick/personal/vacation days, and eligibility for the Insurance program is at the discretion of the State of New Jersey; however, if the Township has reason to believe that the leave does not qualify for compensation through the Insurance program, it reserves the right to present its information to the State of New Jersey for its review and consideration.

The Insurance program does not require that the Township maintain an employee's position with the Company or return the employee to his/her position when the employee is done caring for a family member. An employee's return to his/her position is solely within the discretion of the Township.

1. Eligibility:

To be eligible for compensation from the State of New Jersey, an employee must have worked 20 calendar weeks for a New Jersey employer within the twelve months preceding the need for the leave.

The leave must be to care for a "serious health condition" of a family member, including a spouse, parent, child, civil union partner, or domestic partner. Caring for one's own serious medical condition is not a qualifying reason to receive compensation through the Paid Family Leave Insurance program. If the employee is to care for a newborn child, then such care must be given within the first year of the child's birth in order for the employee to be eligible for Insurance program compensation. If an employee is to care for a newly placed adopted child, in order to be eligible for Insurance program compensation, the care must be provided within the first twelve months of the placement in the employee's home.

A "serious medical condition" is an illness, injury, impairment or physical or mental condition which requires that the family member (1) receive inpatient care in a hospital, hospice, or residential medical care facility or (2) continue medical treatment or continuing supervision by a health care provider.

2. Compensation:

To receive compensation through New Jersey Paid Family Leave Insurance program, the employee must apply through the State of New Jersey. The Township will fill out the appropriate information concerning the employee's salary and other relevant information as needed. It is the employee's responsibility to apply for the compensation. The Township will assist in the process as required; however, it is not the Township's obligation to complete or submit the application on the employee's behalf.

To be eligible for the Paid Family Leave Insurance program, an employee must first use up to two weeks of his/her sick/personal/vacation days prior to receiving compensation from the State of New Jersey. If the employee has less than two weeks of sick/personal/vacation days accumulated at the time the care is to be given, the employee must exhaust the accumulated sick/personal/vacation days prior to being eligible for compensation through the Paid Family Leave Insurance program.

An employee may receive four (4) weeks of compensation through the Insurance program, after having used up to two weeks of sick/personal/vacation days. During the Insurance program compensation period, an eligible employee may receive up to two thirds (2/3) of their pay per week but no more than \$524 per week from the New Jersey Paid Family Leave Insurance program. The Insurance program payment amounts are subject to change at the discretion of the State of New Jersey.

Compensation while caring for a family member's serious health condition can be received while taking a block of time or intermittent time. As such, an employee may receive compensation if he/she takes six consecutive weeks off from work or takes up to 42 days intermittently to care for the family member. If the time is taken intermittently, all of the compensated days must be taken in a twelve month period.

3. Notice to the Township:

To be eligible for the Paid Family Leave Insurance program, an employee must provide "reasonable" notice to the Township that such leave is necessary. If an employee seeks to take intermittent leave, then no less than 15 days notice is required, absent emergent or unforeseen circumstances.

If the leave is to care for a newly born child or the placement of an adopted child, the employee must provide 30 days notice to the Township. Failure to provide the required notice, absent extenuating circumstances, will result in the employee losing up to two (2) weeks of compensation from the insurance program.

Section 4. All ordinances or parts of ordinances in conflict or inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

Section 5. In case, for any reason, any section or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other section or provision of this Ordinance, except so far as the section or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

Section 6. This ordinance shall take effect in accordance with the law.

TOWNSHIP COMMITTEE
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

DATE OF INTRODUCTION: February 11, 2010

DATE OF ADOPTION: February 25, 2010