

ORDINANCE NO. 36-2004

**REPEALING ORDINANCES NO. 9-1983, 11-1996, AND 7-2001, AND PROVIDING
ADDITIONAL FRINGE BENEFITS FOR FULL TIME EMPLOYEES IN THE FORM
OF SICK LEAVE AND DECLARING AN EMERGENCY**

WHEREAS, this Council previously provided sick leave for Village employees in Ordinances No. 9-1983, 11-1996, and 7-2001; and

WHEREAS, it is necessary and desirable to modify the terms of such leave and to comply with applicable law in the provision of sick leave;

NOW, THEREFORE, BE IT ORDAINED by the Council of the Village of Fairfax, State of Ohio that:

SECTION I: If an employee is eligible for leave under the federal Family and Medical Leave Act, 29 U.S.C. §§ 2601 *et seq.* as amended and supplemented ("FMLA"), and requires leave for a reason covered by the FMLA, the Village will grant a leave of absence in accordance with the FMLA. FMLA leave will be granted for up to twelve (12) weeks in a rolling twelve month period as set forth in the following subsections.

- (A) An eligible employee is entitled to leave under the FMLA for the following reasons:
- (1) the birth of a son or daughter of the employee and to care for the newborn child;
 - (2) placement of a son or daughter with the employee for adoption or foster care;
 - (3) to care for the employee's spouse, son, daughter, or parent who has a "Serious Health Condition" as defined by the FMLA; and
 - (4) the employee's own Serious Health Condition that makes the employee unable to perform the functions of the employee's job.
- (B) Leave under the FMLA shall be without pay, unless the employee is entitled to pay during the absence pursuant to Section II of this Ordinance or pursuant to any other applicable Village Ordinance. If eligible, the employee must first exhaust any applicable paid accrued vacation, sick leave, or personal days before taking FMLA leave. Eligibility for any such paid leave shall be determined according to the terms and conditions of any Ordinance providing for the same. Time off, even though paid, shall be charged against the maximum amount of FMLA leave to which an employee is entitled. It also shall be charged against any entitlement under any applicable paid leave Ordinance.

- (C) Where foreseeable, notice of the need for FMLA leave must be given thirty (30) days prior to the beginning of the requested leave. In other situations, it must be given within a reasonable time, generally not more than one or two business days after the need for the leave becomes known to the employee.
- (D) The employee must provide a medical certification in the event of leave for the employee's Serious Health Condition or to care for the employee's spouse, son, daughter, or parent who has a Serious Health Condition. The medical certification must verify that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee's job or position because of a Serious Health Condition, or that the employee's parent, spouse, or child is affected by a Serious Health Condition and requires care by the employee. When the leave is foreseeable and at least thirty (30) days' notice has been provided, the employee should provide the medical certification before the leave begins. If thirty (30) days' notice is not possible, the employee must provide the medical certification within fifteen (15) calendar days after the Village's request.
- (E) Failure to provide requested certifications, verifying information, or documentation in a timely manner may result in delay of FMLA leave. An employee will be given a reasonable opportunity to cure the deficiencies in any incomplete certification. However, if the employee does not produce the requested certifications, information, or documentation, then at the Village's option, the leave may not be designated as FMLA leave.
- (F) An employee who returns from FMLA leave shall return to the position held at the beginning of the leave or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment, provided, however, that an employee is not entitled to return to a position other than that to which he/she would have been entitled had the employee not taken the leave.
- (H) Group medical insurance, where applicable, shall be continued in effect for any employee who is on an approved FMLA leave. If the employee is on a paid leave, the employee contribution will be made in the same way as it would have been made had the employee been working. If the leave is unpaid, the employee must pay his/her contribution amount, if applicable, directly to the Village on or before the first day of the month for which the premium contribution is due. After required notification, coverage may be terminated if the payment is more than thirty (30) days late.
- (I) If the employee fails to return from an unpaid FMLA leave (unless the failure to return is because of a Serious Health Condition of the employee or the spouse, child, or parent for whom he/she is caring and is supported by a proper medical certification, or other circumstances beyond the employee's control), the Village may recover any amounts owed by the employee to the Village or otherwise, the amount of any cost or obligation incurred by the Village to keep this insurance in effect. The Village also may recover the amount of the employee's share of any

premium paid by the Village to keep the employee's medical insurance in effect. To the extent permitted by law, the amounts owed by an employee to the Village shall be deducted from amounts owed to the employee by the Village.

SECTION II: All full time employees of the Village shall be entitled to sick leave as set forth in the following subsections. Such sick leave must be exhausted before a full time employee is entitled to FMLA leave as set forth in Section I above, and shall be counted against FMLA leave in the manner set forth in Section I.

(A) All full time employees shall receive fourteen (14) sick days per calendar year to be used in the manner described below, except that the employee shall not receive that number of "short term" or "long term" sick days which, at any time during a calendar year, would place that employee's total of unused accumulated sick days past the maximum totals set forth below. If an employee becomes full time during a calendar year, the employee shall receive a prorated number of sick days less than fourteen (14), equal to that portion of the year in which he or she is full time, except that if the employee becomes full time after September 30 of the calendar year in question, the employee shall not receive any sick days for the remainder of that calendar year.

(1) Seven such sick days are hereby designated "short term" sick days. For each occurrence giving rise to the use of any short term sick days, an employee may use the first such sick day without having to obtain the approval of his or her Department Head and without having to provide proof of illness, but the employee must provide whatever notice of absence from work his or her Department Head requires.

The second and third consecutive short term sick days used per occurrence may only be taken with the prior approval of the employee's Department Head, but shall not require verification from a physician. The use of all consecutive short term sick days beyond three (3) consecutive days requires verification of illness to the Department Head from a physician and the prior approval of the employee's Department Head.

(2) An employee may accumulate unused short term sick days from year to year up to a maximum total of fourteen (14) unused short term sick days. After accumulating the maximum of fourteen (14) sick days, unused sick days shall be accumulated as "long term" sick days in the manner described below. An employee may use none, some, or all of his or her accumulated short term sick days in any calendar year, but no employee may use a total of more than fourteen (14) short term sick days in any calendar year.

(3) The remaining seven (7) sick days received in a calendar year are hereby designated as "long term" sick days. An employee may use long term sick days only after an employee has been off work for illness for five (5)

consecutive days, and subject to verification of illness to the Department Head from a physician and prior approval of the Department Head. As to the first five (5) consecutive days an employee must take off before using any of his or her long term sick days, the employee shall be compensated as sick pay only for those days he or she has available and uses as compensable short term sick days. Any of the five (5) days prior to using long term sick days not available as compensable short term sick days shall be without pay, unless the employee uses some other available and compensable time off, such as vacation time, compensatory time, or other paid time off to which he or she is entitled.

- (4) An employee may accumulate unused long term sick days from year to year up to a maximum total of seventy six (76) long term sick days. An employee may use none, some, or all of his or her long term sick days in any calendar year, but no employee may use a total of more than seventy six (76) long term sick days in any calendar year.
- (B) The first three (3) consecutive short term or long term sick days used at one time or for one illness shall be with pay. All other consecutive sick days used at one time or for the same illness shall be without pay, except that the employee's Department Head shall grant the employee his or her usual compensation for the additional consecutive sick days used beyond three (3) consecutive days if the employee provides satisfactory proof from a physician, as determined by the Department Head, that such additional days are necessary.

The employee may appeal, in writing and within seven (7) days of his or her return to work, the Department Head's denial of such additional days off with pay to the Mayor, who may affirm, reverse, or modify the Department Head's decision. The employee may appeal the Mayor's decision, in writing and within seven (7) days of the Mayor's decision, to Council, which may affirm, reverse, or modify the Mayor's decision, and which will consider the matter at its next regularly scheduled meeting if practical, or if not practical, at its next regularly scheduled meeting following that.

- (C) The employee may also use any accumulated sick days to care for the following ill family members: spouse, children, parents, siblings, grandparents (including all great-grandparents), mother-in-law, and father-in-law. The use of these sick days is subject to the same guidelines for short term and long term sick days set forth above, and additionally, the Department Head must first determine that the Department will not be unduly hampered without the employee.
- (D) Notwithstanding any of the foregoing sections, no Village employee may submit a claim for disability benefits pursuant to the Village's disability insurance policy until he or she first exhausts all short term and long term sick days available to him or her.

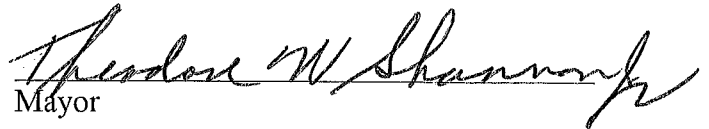
- (E) At no time, including, but not limited to, the cessation of employment with the Village, shall an employee be entitled to compensation for any unused short term or long term sick days. All sick days not used or otherwise appropriately held in accumulation by a Village employee shall be forfeited without compensation.

SECTION III: To the extent any of the foregoing sections or portions thereof are held to be contrary to law, the remaining sections or portions thereof shall remain in full force and effect notwithstanding such holding.

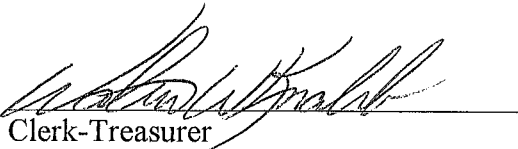
SECTION IV: Ordinance No. 9-1983, Ordinance No. 11-1996, and Ordinance No. 7-2001 are hereby repealed.

SECTION V: This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall be effective immediately. The reason for said declaration of emergency is the immediate need to provide timely and adequate sick leave for Village employees in compliance with applicable law.

Passed this 15TH day of NOVEMBER, 2004.


Mayor

ATTEST:


Clerk-Treasurer

CERTIFICATE

I hereby certify this to be a true and correct copy of Ordinance No. 36-2004 passed at a meeting of the Council of the Village of Fairfax on this 15TH day of NOVEMBER, 2004.

