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TOWN OF WILBRAHAM  
240 Springfield Street  
Wilbraham, Massachusetts 01095

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## **Regulatory Policies**

**Effective September 14, 2010**  
**Amended August 13, 2012 (Disability Accommodation)**  
**Amended May 18, 2015 (Domestic Violence Leave)**  
**Amended June 1, 2015 (Nepotism and Fraternization)**  
**Amended October 5, 2015 (Parental Leave)**  
**Amended September 17, 2018 (Protected Classes)**  
**Amended November 26, 2018 (Protected Classes)**

The policies in this manual are regulatory in nature and generally required by law. These policies apply to all town employees, including board and committee members and volunteers in town government.

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## COMMUNICATIONS POLICY

Policy. It is the policy of the Town of Wilbraham (the “Town”) to ensure effective business communications among all individuals within the Town and with others outside of the Town, in particular the Town’s citizens. It is important that all forms of communication, whether verbal, written or transmitted via the Town’s electronic communications systems, promote an atmosphere of professionalism, courtesy and respect.

All communications regarding Town procedure and administration or which may affect the Town or its personnel as a whole, will either originate from or be approved by the Town prior to distribution. No individual in the Town is to send or distribute any communication to “All Personnel” or “All Users” without prior authorization from the Town. Managers are authorized to send or distribute communications regarding their area’s business.

Bulletin Boards. The Town maintains an official bulletin board, which is designated for the posting of Town notices. Employees are not authorized to post any form of literature, printed or written materials, or notices of any kind the Town’s bulletin board, on the walls, in the copy areas or on the Town’s property.

Solicitations. Employees are prohibited from soliciting other employees during working time and from distributing materials in work areas. Work time does not include rest periods, breaks or lunch periods. Employees are prohibited from selling or buying merchandise at any time. Persons not employed by the Town are prohibited from soliciting employees on the Town’s premises or distributing materials on the Town’s non-public areas at any time for any purpose.

Electronic Communication Devices. Electronic communication devices as defined in this policy include, but are not limited to, the Town’s telephone system (including voicemail), facsimiles, electronic mail, instant messaging, text messaging, Internet services, Intranet, cell phone services, pagers, copy machines, Town-owned lap tops and computers provided for home use and computer software (“electronic communication devices” or collectively referred to as “electronic communication systems”). Electronic communication devices are Town-owned resources and are provided as business communication tools. All information or transmissions that are created, sent, received or stored on the Town’s electronic communication systems, including passwords, (“electronic communications”) are the sole property of the Town.

This policy governs all use of Town-owned electronic communication devices, electronic communications and electronic communication systems and also governs electronic communications which occur using electronic communication devices or electronic communication systems not owned by the Town but that occur in connection with the Town’s activities whether on or off the Town’s premises. Electronic messages should be communicated with the same thought and care devoted to written or verbal communications. Individuals should not transmit any form of electronic communication that they would not be comfortable writing in a letter or memorandum. All individuals of the Town must adhere to the following, both while on the Town’s premises and off-site, and use good judgment when using the Town’s electronic communication devices.

Privacy. There can be no guarantee of privacy for electronic communications. The Town reserves the right to review and/or monitor all electronic records and communications, at any time, with or without notice, including individual user folders and other information stored on the Town’s electronic communication systems. In accessing the Internet, users should assume that all connections and sites visited will be monitored and recorded. This examination helps to ensure compliance with Town policies, assists when internal investigations must be conducted and supports the management of the Town’s information systems. Use of the Town’s electronic communication devices constitutes acceptance of such monitoring.

Security. The Town’s electronic communication systems are to be used only by authorized persons. An electronic mail (e-mail) account is assigned to each user with a username and password. Any communication sent from that account is the responsibility of the user assigned to the account. Except when specifically authorized by the Town, users shall not (i) disclose their passwords to others; (ii) use someone else’s password; (iii) provide their e-mail address to any non-business related Internet Web site; or (iv) transmit their user names or passwords through the e-mail. Passwords are designed to provide security of the Town’s

electronic communication systems from unauthorized users, not to provide privacy to individual users of the Town's electronic communication systems.

Workplace Environment. The Town is committed to maintaining a working environment free from all forms of abuse and harassment. Use of the Town's electronic communication systems to send abusive, vulgar, offensive or discriminatory messages is prohibited. Among those which are considered offensive are any messages which contain profanity, overt sexual language, sexual implications or innuendo or comments that offensively address someone's age, gender, race, sexual orientation, religious beliefs, national origin, or disability.<sup>1</sup> Individuals of the Town are responsible for the content of all text, audio or images that they place or send over the Internet and for ensuring that the Internet is used in an effective, ethical and lawful manner. The transmission or downloading of any sexually explicit materials including abusive, profane or offensive language or images is prohibited. The Town reserves the right to access and monitor all messages and files as it deems necessary and appropriate.

Effective Business Communications. While e-mail and voicemail may be the quickest and easiest way to communicate, it may not always be the most appropriate or effective way to communicate when managing or conducting the Town's business. Individuals of the Town should avoid using e-mail when the message that must be communicated involves extremely important, confidential or sensitive internal Town matters (e.g., discussions regarding an employee's work performance or a candidate's application for employment). Such communications, including dialogues that call for extensive back-and-forth discussion, are best held in person or on the phone.

Confidential Information. Users of the Town's electronic communication systems should be careful in creating e-mail messages that contain confidential information or providing such information through access to Internet web sites. Even when a message has been deleted or Internet access terminated, the information may still exist in a printed or electronic version, may be recreated from a back-up system, or may have been forwarded by the recipient to someone else.

Protected Health Information. Individuals of the Town authorized to access Protected Health Information ("PHI") must take reasonable steps to ensure that access to electronically transmitted PHI is password protected. Electronically stored PHI, including such information residing in electronic messages, electronic document files, databases, floppy disks, CDs and other computer files must be password-protected and accessible only by individuals of the Town who have a need for access. Reasonable steps must also be taken to ensure that all incoming facsimiles and print jobs containing PHI are viewable and retrievable only by individuals of the Town with a legitimate need for access. PHI that no longer needs to be retained after use should be deleted or shredded, unless subject to record retention policies and procedures.<sup>2</sup>

Electronic Discussion Groups or Subscription Services. Participation by any individual of the Town in an electronic discussion group (chat room), such as a list-serv, blog, newsgroup, or an e-mail subscription service, shall be allowed only if such participation relates to the business of the Town. No participation in such groups for personal reasons is allowed whether during, before, or after normal business hours except in limited situations (e.g., CNN Breaking News) and pre-approval has been obtained from the Town Administrator. Individuals of the Town should be mindful that no confidential information may be shared with other group participants.

Viruses. Any files downloaded from e-mail or Internet web sites and any computer disks received from outside sources must be scanned with the Town's virus detection software before installation or use. Downloading programs (including self-installing software and upgrades) is prohibited without prior approval from the Information Technology Director. Any viruses detected, tampering or system problems must be reported immediately to the IT Director.

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<sup>1</sup> Sexual harassment and harassment on the basis of race, color, religious creed, national origin, sex, ancestry, sexual orientation, as defined by law, or on the basis of age, as defined by law, disability or genetic information are covered by the Town's *Sexual Harassment Policy* and *Protected Class Policy* and should be referenced for those specific requirements.

<sup>2</sup> Subject to the Town's *HIPAA Privacy Compliance Program*.

Personal Use. The use of the Town's electronic communication devices is primarily for business purposes. Personal use of electronic communication devices during business hours is prohibited except in limited situations when circumstances warrant communications with family members or co-workers as well as the use of electronic communication devices for community activities, educational or professional development purposes. Individuals may not abuse this privilege for any significant amount of personal use or activity. Any personal use of the Town's electronic communication devices or electronic communication systems is expected to be on the employee's own time and is not to interfere with the employee's job responsibilities or the business operation of the Town. Any communication sent is the responsibility of the user assigned to the account.

Specific Prohibited Uses. In addition to requiring compliance with this policy, the Town expressly prohibits the use of the camera feature on personal cell phones while working and while on the Town's premises. The Town also expressly prohibits certain specific types of misuse of the Town's electronic communication devices or systems. Personnel shall not use the Town's or other electronic communication devices or electronic communication systems to:

- engage in any illegal activity including, but not limited to, pornography, terrorism, espionage, theft, drugs, gambling or hacking;
- send, receive, access, create, print or distribute or otherwise transmit any form of offensive, discriminatory, obscene, pornographic, harassing, defamatory, derogatory, disruptive or otherwise inappropriate communication, at any time, to any person or entity;
- send, receive, access, create, print, distribute or otherwise transmit inappropriate language or images that offensively address someone's age, gender, race, sexual orientation, religious beliefs, national origin or disability;
- release any communication that violates the Town's confidentiality requirements including divulging confidential or privileged information;
- use or disclose Protected Health Information ("PHI") unless pursuant to the Town's *HIPAA Privacy Compliance Program*;
- authorize other individuals to send e-mail from their account or use another account to send e-mail communications for their own purposes;
- engage in extensive personal communications with co-workers, friends or family members;
- send, receive, access, copy, print, distribute or otherwise transmit copyrighted materials, including music, articles and software, movies, trade secrets or proprietary financial information in violation of Town policy or written agreements or without prior authorization;
- install personal software on Town-owned computers or install Town-owned software on computers that are not owned by the Town without the prior written approval of the IT Director and Town Administrator;
- operate a business, solicit outside business ventures, usurp business opportunities, search for outside employment or for solicitation in connection with political, religious or personal causes (except as described in subsection I above); and
- engage in unethical activities or content, or activities or content that could damage the Town's reputation.

All such instances as specified in this subsection J must be reported immediately to a supervisor, management or human resources. It is important to note that while this policy sets forth specific prohibited uses of the Town's electronic communications, electronic communication devices and electronic communication systems as outlined above, the policy is not designated or intended to limit our authority to discipline or take remedial action for inappropriate use of the Town's electronic communications, electronic communication devices and electronic communication systems which we deem unacceptable, regardless of whether it is specified in this policy.

Deletion of E-Mails and Messages. The Town reserves the right to delete e-mails or messages, or other communications, at any time without notice.

Cell Phones. While at work, employees are expected to exercise the same discretion in using personal cellular phones as is expected for the use of the Town's phone system. Personal cell phones to place or receive personal calls should be kept to a minimum while on the Town's premises and are expected to be on the employee's own time and not interfere with the employee's job responsibilities or be disruptive to the

business operation of the Town. Personal cell phones are to be turned off or placed on silent mode during meetings and in public work areas of the Town. Use of cell phones to discuss Town-related information must be done with extreme caution so as to eliminate the possibility of a breach of confidentiality or the inadvertent disclosure of confidential information. The Town will not be liable for the loss of personal cellular phones brought onto the Town's premises. Individuals of the Town who are charged with traffic violations resulting from the use of their cell phones while driving will be solely responsible for all liabilities that result from such actions.

Safety studies have shown that drivers who use a cellular telephone while their vehicle is in motion are at a higher risk of being in an auto accident than non-callers. The Town recommends that personnel not use a cellular phone while driving. However, should a situation arise in which an individual of the Town needs to use a cell phone while driving, the following safety guidelines shall be followed:

- choose as your first option to pull off to the side of the road and safely stop the vehicle before placing or accepting a call when utilizing your cell phone in your vehicle;
- use a hands-free device when available to avoid having to dial or handle the phone while in traffic,
- read your instruction manual before driving in order to become acquainted with features such as speed dial and redial and do not take notes or look up phone numbers while driving;
- position your phone within easy reach so that you can access it without taking your eyes off the road;
- dial sensibly by assessing the traffic beforehand and dial while at a red light, stop sign or otherwise stopped and avoid altogether, if possible, having to dial the phone while in traffic;
- keep calls to a minimum, suspend conversations during heavy traffic or hazardous weather conditions and let the person you are talking with know you are driving and may be interrupted;
- avoid stressful or emotional conversations while driving by either pulling over or ending the conversation; and
- use your cell phone to call for help by dialing 911 in emergency situations.

#### Violation of Policy

Any individual violating this policy, including failure to report violations, will be subject to appropriate discipline, including possible termination of employment.<sup>3</sup> The Town intends to follow each provision of this policy but reserves the right to change any provision at any time if circumstances warrant or require and also reserves the right to terminate or restrict access to any part of the Town's electronic communication systems on an individual or group basis at any time for any reason. A failure to enforce this policy does not constitute a subsequent waiver of any violation of this policy. This policy should be read and interpreted in conjunction with all other Town policies and procedures.

#### Complaints or Problems of Misuse

Should any individual of the Town receive a harassing, offensive, threatening or intimidating communication from inside or outside of the Town, the individual should initiate a complaint by contacting the Harassment Grievance Officer as soon as possible. The current Harassment Grievance Officer is Herta Dane, Human Resources Coordinator. She can be reached at 240 Springfield Street, Wilbraham, MA 01095, and her telephone number is 413-596-2800 extension 100. If you would prefer, you may contact Robert Weitz, Town Administrator, who has been designated as the Alternate Harassment Grievance Officer. He can be reached at 240 Springfield Street, Wilbraham, MA 01095, and his telephone number is 413-596-2800 extension 103.

#### Exemptions

The Town recognizes that the job requirements of several positions may conflict with specific language of this Policy. Accordingly, the Town Administrator may exempt such positions from sections of this policy as necessary to carry out their individual responsibilities. It shall be the responsibility of the Town Administrator to develop a list of positions and to identify the specific sections of the policy that are inapplicable. An addendum shall be attached to the staff's signed Acceptable Use Agreement Form indicating the nature and extent of the exemption. Appropriate personnel will monitor use of the Internet to ensure enforcement of the policy.

Adopted via motion of the Board of Selectmen on April 26, 2010.

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<sup>3</sup> Subject to the Town's at-will employment policy and to collective bargaining agreements.

## CONFLICT OF INTEREST

All Municipal officials and employees, whether elected or appointed, paid or unpaid, full-time or part-time, are covered by the Conflict of Interest Law (M.G.L. Chapter 268A). The Commonwealth of Massachusetts State Ethics Commission oversees the Conflict of Interest Law.

The law places certain restrictions on municipal employees. M.G.L. Chapter 268 Section 17 generally prohibits municipal employees from representing a private party before municipal boards or departments. It also prohibits municipal employees from acting as agent (or attorney) for a private party in connection with any matter of direct and substantial interest to their city or town. Finally, it prohibits municipal employees from accepting pay or other compensation in connection with any matter of direct and substantial interest to their municipality.

Municipal employees are generally prohibited from holding more than one municipal position, however, there are many exemptions to this general prohibition.

M.G.L. Chapter 268 Section 20 generally prohibits municipal employees from having a direct or indirect financial interest in a contract with their city or town, but again, there are many exemptions in this section of the law.

If you have any concerns or if questions arise in the course of your employment with the town, which could be impacted by the Conflict of Interest Law, please contact the Town Administrator.

You may also contact the Ethics Commission directly at:

The John W. McCormack Building  
One Ashburton Place  
Room 619  
Boston, MA 02108

Phone: (617) 727-0060  
Toll Free: (888) 485-4766  
FAX: (617) 723-5851  
<http://www.state.ma.us/ethics/>

### Summary of the Conflict of Interest Law for Municipal Employees

This summary of the conflict of interest law, Massachusetts General Laws Chapter 268A, is intended to help municipal employees understand how that law applies to them. This summary is not a substitute for legal advice, nor does it mention every aspect of the law that may apply in a particular situation. Municipal employees can obtain free confidential advice about the conflict of interest law from the Commission's Legal Division at our website, phone number, and address above. Municipal counsel may also provide advice.

The conflict of interest law seeks to prevent conflicts between private interests and public duties, foster integrity in public service, and promote the public's trust and confidence in that service by placing restrictions on what municipal employees may do on the job, after hours, and after leaving public service, as described below. The sections referenced below are sections of G.L. c. 268A.

When the Commission determines that the conflict of interest law has been violated, it can impose a civil penalty of up to \$10,000 (\$25,000 for bribery cases) for each violation. In addition, the Commission can order the violator to repay any economic advantage he gained by the violation, and to make restitution to injured third parties. Violations of the conflict of interest law can also be prosecuted criminally.

I. Are you a municipal employee for conflict of interest law purposes?

You do not have to be a full-time, paid municipal employee to be considered a municipal employee for conflict of interest purposes. Anyone performing services for a city or town or holding a municipal position, whether paid or unpaid, including full- and part-time municipal employees, elected officials, volunteers, and consultants,

is a municipal employee under the conflict of interest law. An employee of a private firm can also be a municipal employee, if the private firm has a contract with the city or town and the employee is a “key employee” under the contract, meaning the town has specifically contracted for her services. The law also covers private parties who engage in impermissible dealings with municipal employees, such as offering bribes or illegal gifts.

## II. On-the-job restrictions.

(a) Bribes. Asking for and taking bribes is prohibited. (See Section 2)

A bribe is anything of value corruptly received by a municipal employee in exchange for the employee being influenced in his official actions. Giving, offering, receiving, or asking for a bribe is illegal.

Bribes are more serious than illegal gifts because they involve corrupt intent. In other words, the municipal employee intends to sell his office by agreeing to do or not do some official act, and the giver intends to influence him to do so. Bribes of any value are illegal.

(b) Gifts and gratuities. Asking for or accepting a gift because of your official position, or because of something you can do or have done in your official position, is prohibited. (See Sections 3, 23(b) (2), and 26)

Municipal employees may not accept gifts and gratuities valued at \$50 or more given to influence their official actions or because of their official position. Accepting a gift intended to reward past official action or to bring about future official action is illegal, as is giving such gifts. Accepting a gift given to you because of the municipal position you hold is also illegal. Meals, entertainment event tickets, golf, gift baskets, and payment of travel expenses can all be illegal gifts if given in connection with official action or position, as can anything worth \$50 or more. A number of smaller gifts together worth \$50 or more may also violate these sections.

*Example of violation:* A town administrator accepts reduced rental payments from developers.

*Example of violation:* A developer offers a ski trip to a school district employee who oversees the developer’s work for the school district.

Regulatory exemptions. There are situations in which a municipal employee’s receipt of a gift does not present a genuine risk of a conflict of interest, and may in fact advance the public interest. The Commission has created exemptions, and is considering creating additional exemptions, permitting giving and receiving gifts in these situations. One commonly used exemption permits municipal employees to accept payment of travel-related expenses when doing so advances a public purpose. Other exemptions are listed on the Commission’s website.

*Example where there is no violation:* A fire truck manufacturer offers to pay the travel expenses of a fire chief to a trade show where the chief can examine various kinds of fire-fighting equipment that the town may purchase. The chief fills out a disclosure form and obtains prior approval from his appointing authority.

(c) Misuse of position. Using your official position to get something you are not entitled to, or to get someone else something they are not entitled to, is prohibited. Causing someone else to do these things is also prohibited. (See Sections 23(b) (2) and 26)

A municipal employee may not use her official position to get something worth \$50 or more that would not be properly available to other similarly situated individuals. Similarly, a municipal employee may not use her official position to get something worth \$50 or more for someone else that would not be properly available to other similarly situated individuals. Causing someone else to do these things is also prohibited.

*Example of violation:* A full-time town employee writes a novel on work time, using her office computer, and directing her secretary to proofread the draft.

*Example of violation:* A city councilor directs subordinates to drive the councilor’s wife to and from the grocery store.

*Example of violation:* A mayor avoids a speeding ticket by asking the police officer who stops him, “Do you know who I am?” and showing his municipal I.D.

(d) Self-dealing and nepotism. Participating as a municipal employee in a matter in which you, your immediate family, your business organization, or your future employer has a financial interest is prohibited. (See Section 19)

A municipal employee may not participate in any particular matter in which he or a member of his immediate family (parents, children, siblings, spouse, and spouse’s parents, children, and siblings) has a financial interest. He also may not participate in any particular matter in which a prospective employer, or a business organization of which he is a director, officer, trustee, or employee has a financial interest. Participation includes discussing as well as voting on a matter, and delegating a matter to someone else.

A financial interest may create a conflict of interest whether it is large or small, and positive or negative. In other words, it does not matter if a lot of money is involved or only a little. It also does not matter if you are putting money into your pocket or taking it out. If you, your immediate family, your business, or your employer have or has a financial interest in a matter, you may not participate. The financial interest must be direct and immediate or reasonably foreseeable to create a conflict. Financial interests which are remote, speculative or not sufficiently identifiable do not create conflicts.

*Example of violation:* A school committee member’s wife is a teacher in the town’s public schools. The school committee member votes on the budget line item for teachers’ salaries.

*Example of violation:* A member of a town affordable housing committee is also the director of a non-profit housing development corporation. The non-profit makes an application to the committee, and the member/director participates in the discussion.

*Example:* A planning board member lives next door to property where a developer plans to construct a new building. Because the planning board member owns abutting property, he is presumed to have a financial interest in the matter. He cannot participate unless he provides the State Ethics Commission with an opinion from a qualified independent appraiser that the new construction will not affect his financial interest.

In many cases, where not otherwise required to participate, a municipal employee may comply with the law by simply not participating in the particular matter in which she has a financial interest. She need not give a reason for not participating.

There are several exemptions to this section of the law. An appointed municipal employee may file a written disclosure about the financial interest with his appointing authority, and seek permission to participate notwithstanding the conflict. The appointing authority may grant written permission if she determines that the financial interest in question is not so substantial that it is likely to affect the integrity of his services to the municipality. Participating without disclosing the financial interest is a violation. Elected employees cannot use the disclosure procedure because they have no appointing authority.

*Example where there is no violation:* An appointed member of the town zoning advisory committee, which will review and recommend changes to the town’s by-laws with regard to a commercial district, is a partner at a company that owns commercial property in the district. Prior to participating in any committee discussions, the member files a disclosure with the zoning board of appeals that appointed him to his position, and that board gives him a written determination authorizing his participation, despite his company’s financial interest. There is no violation. There is also an exemption for both appointed and elected employees where the employee’s task is to address a matter of general policy and the employee’s financial interest is shared with a substantial portion (generally 10% or more) of the town’s population, such as, for instance, a financial interest in real estate tax rates or municipal utility rates.

(e) False claims. Presenting a false claim to your employer for a payment or benefit is prohibited, and causing someone else to do so is also prohibited. (See Sections 23(b) (4) and 26)

A municipal employee may not present a false or fraudulent claim to his employer for any payment or benefit worth \$50 or more, or cause another person to do so.

*Example of violation:* A public works director directs his secretary to fill out time sheets to show him as present at work on days when he was skiing.

(f) Appearance of conflict. Acting in a manner that would make a reasonable person think you can be improperly influenced is prohibited. (See Section 23(b) (3))

A municipal employee may not act in a manner that would cause a reasonable person to think that she would show favor toward someone or that she can be improperly influenced. Section 23(b)(3) requires a municipal employee to consider whether her relationships and affiliations could prevent her from acting fairly and objectively when she performs her duties for a city or town. If she cannot be fair and objective because of a relationship or affiliation, she should not perform her duties. However, a municipal employee, whether elected or appointed, can avoid violating this provision by making a public disclosure of the facts. An appointed employee must make the disclosure in writing to his appointing official.

*Example where there is no violation:* A developer who is the cousin of the chair of the conservation commission has filed an application with the commission. A reasonable person could conclude that the chair might favor her cousin. The chair files a written disclosure with her appointing authority explaining her relationship with her cousin prior to the meeting at which the application will be considered. There is no violation of Sec. 23(b)(3).

(g) Confidential information. Improperly disclosing or personally using confidential information obtained through your job is prohibited. (See Section 23(c))

Municipal employees may not improperly disclose confidential information, or make personal use of non-public information they acquired in the course of their official duties to further their personal interests.

### III. After-hours restrictions.

(a) Taking a second paid job that conflicts with the duties of your municipal job is prohibited. (See Section 23(b) (1)) A municipal employee may not accept other paid employment if the responsibilities of the second job are incompatible with his or her municipal job.

*Example:* A police officer may not work as a paid private security guard in the town where he serves because the demands of his private employment would conflict with his duties as a police officer.

(b) Divided loyalties. Receiving pay from anyone other than the city or town to work on a matter involving the city or town is prohibited. Acting as agent or attorney for anyone other than the city or town in a matter involving the city or town is also prohibited whether or not you are paid. (See Sec. 17)

Because cities and towns are entitled to the undivided loyalty of their employees, a municipal employee may not be paid by other people and organizations in relation to a matter if the city or town has an interest in the matter. In addition, a municipal employee may not act on behalf of other people and organizations or act as an attorney for other people and organizations in which the town has an interest. Acting as agent includes contacting the municipality in person, by phone, or in writing; acting as a liaison; providing documents to the city or town; and serving as spokesman.

A municipal employee may always represent his own personal interests, even before his own municipal agency or board, on the same terms and conditions that other similarly situated members of the public would be allowed to do so. A municipal employee may also apply for building and related permits on behalf of someone else and be paid for doing so, unless he works for the permitting agency, or an agency which regulates the permitting agency.

*Example of violation:* A full-time health agent submits a septic system plan that she has prepared for a private client to the town's board of health.

*Example of violation:* A planning board member represents a private client before the board of selectmen on a request that town meeting consider rezoning the client's property.

While many municipal employees earn their livelihood in municipal jobs, some municipal employees volunteer their time to provide services to the town or receive small stipends. Others, such as a private attorney who provides legal services to a town as needed, may serve in a position in which they may have other personal or private employment during normal working hours. In recognition of the need not to unduly restrict the ability of town volunteers and part-time employees to earn a living, the law is less restrictive for "special" municipal employees than for other municipal employees.

The status of "special" municipal employee has to be assigned to a municipal position by vote of the board of selectmen, city council, or similar body. A position is eligible to be designated as "special" if it is unpaid, or if it is part-time and the employee is allowed to have another job during normal working hours, or if the employee was not paid for working more than 800 hours during the preceding 365 days. It is the position that is designated as "special" and not the person or persons holding the position. Selectmen in towns of 10,000 or fewer are automatically "special"; selectman in larger towns cannot be "specials."

If a municipal position has been designated as "special," an employee holding that position may be paid by others, act on behalf of others, and act as attorney for others with respect to matters before municipal boards other than his own, provided that he has not officially participated in the matter, and the matter is not now, and has not within the past year been, under his official responsibility.

*Example:* A school committee member who has been designated as a special municipal employee appears before the board of health on behalf of a client of his private law practice, on a matter that he has not participated in or had responsibility for as a school committee member. There is no conflict. However, he may not appear before the school committee, or the school department, on behalf of a client because he has official responsibility for any matter that comes before the school committee. This is still the case even if he has recused himself from participating in the matter in his official capacity.

*Example:* A member who sits as an alternate on the conservation commission is a special municipal employee. Under town by-laws, he only has official responsibility for matters assigned to him. He may represent a resident who wants to file an application with the conservation commission as long as the matter is not assigned to him and he will not participate in it.

(c) Inside track. Being paid by your city or town, directly or indirectly, under some second arrangement in addition to your job is prohibited, unless an exemption applies. (See Section 20)

A municipal employee generally may not have a financial interest in a municipal contract, including a second municipal job. A municipal employee is also generally prohibited from having an indirect financial interest in a contract that the city or town has with someone else. This provision is intended to prevent municipal employees from having an "inside track" to further financial opportunities.

*Example of violation:* Legal counsel to the town housing authority becomes the acting executive director of the authority, and is paid in both positions.

*Example of violation:* A selectman buys a surplus truck from the town DPW.

*Example of violation:* A full-time secretary for the board of health wants to have a second job working part-time for the town library. She will violate Section 20 unless she can meet the requirements of an exemption.

*Example of violation:* A city councilor wants to work for a non-profit that receives funding under a contract with her city. Unless she can satisfy the requirements of an exemption under Section 20, she cannot take the job.

There are numerous exemptions. A municipal employee may hold multiple unpaid or elected positions. Some exemptions apply only to special municipal employees. Specific exemptions may cover housing-related benefits, public safety positions, certain elected positions, small towns, and other specific situations. Please call the Ethics Commission's Legal Division for advice about a specific situation.

IV. After you leave municipal employment. (See Section 18)

(a) Forever ban. After you leave your municipal job, you may never work for anyone other than the municipality on a matter that you worked on as a municipal employee.

If you participated in a matter as a municipal employee, you cannot ever be paid to work on that same matter for anyone other than the municipality, nor may you act for someone else, whether paid or not. The purpose of this restriction is to bar former employees from selling to private interests their familiarity with the facts of particular matters that are of continuing concern to their former municipal employer. The restriction does not prohibit former municipal employees from using the expertise acquired in government service in their subsequent private activities.

*Example of violation:* A former school department employee works for a contractor under a contract that she helped to draft and oversee for the school department.

(b) One year cooling-off period. For one year after you leave your municipal job you may not participate in any matter over which you had official responsibility during your last two years of public service.

Former municipal employees are barred for one year after they leave municipal employment from personally appearing before any agency of the municipality in connection with matters that were under their authority in their prior municipal positions during the two years before they left.

*Example:* An assistant town manager negotiates a three-year contract with a company. The town manager who supervised the assistant, and had official responsibility for the contract but did not participate in negotiating it, leaves her job to work for the company to which the contract was awarded. The former manager may not call or write the town in connection with the company's work on the contract for one year after leaving the town.

(c) Partners. Your partners will be subject to restrictions while you serve as a municipal employee and after your municipal service ends.

Partners of municipal employees and former municipal employees are also subject to restrictions under the conflict of interest law. If a municipal employee participated in a matter, or if he has official responsibility for a matter, then his partner may not act on behalf of anyone other than the municipality or provide services as an attorney to anyone but the city or town in relation to the matter.

*Example:* While serving on a city's historic district commission, an architect reviewed an application to get landmark status for a building. His partners at his architecture firm may not prepare and sign plans for the owner of the building or otherwise act on the owner's behalf in relation to the application for landmark status. In addition, because the architect has official responsibility as a commissioner for every matter that comes before the commission, his partners may not communicate with the commission or otherwise act on behalf of any client on any matter that comes before the commission during the time that the architect serves on the commission.

*Example:* A former town counsel joins a law firm as a partner. Because she litigated a lawsuit for the town, her new partners cannot represent any private clients in the lawsuit for one year after her job with the town ended.

**This summary is not intended to be legal advice and, because it is a summary, it does not mention every provision of the conflict law that may apply in a particular situation. Our website, [www.mass.gov/ethics](http://www.mass.gov/ethics), contains further information about how the law applies in many situations. You can also contact the State Ethics Commission's Legal Division via our website, by telephone, or by letter. Our contact information is at the top of this document.**

## DOMESTIC VIOLENCE LEAVE POLICY

### A. POLICY

It is the policy of the Town of Wilbraham (the "Town") to grant Domestic Violence Leave in accordance with M.G.L.c.149 § 52E (the "Domestic Violence Leave Act").

### B. PURPOSE

To provide all employees leave for domestic violence, subject to the Domestic Violence Leave Act.

### C. REQUIREMENTS

As provided for under Massachusetts law, employees are eligible to receive up to fifteen (15) days of Domestic Violence Leave, per year, under the following conditions:

1. The employee, or a family member of the employee, is a victim of abusive behavior, as defined below; and
2. The employee is using the leave from work to: seek or obtain medical attention, counseling, victim services or legal assistance; secure housing; obtain a protective order from a court; appear in court or before a grand jury, meet with a district attorney or other law enforcement official; attend child custody proceedings to address other issues directly related to the abusive behavior against the employee or family member of the employee; and
3. The employee is not the perpetrator of the abusive behavior against such employee's family member.

### D. DEFINITIONS

1. **Abuse** under the Domestic Violence Leave Act and this policy is defined as attempting to cause or causing physical harm; placing another in fear of imminent serious physical harm; causing another to engage involuntarily in sexual relations by force, threat or duress, or engaging or threatening to engage in sexual activity with a dependent child; engaging in mental abuse, which includes threats, intimidation or acts designed to induce terror; depriving another of medical care, housing, food or other necessities of life; or restraining the liberty of another.

2. **Domestic Violence** under the Domestic Violence Leave Act and this policy is defined as abuse by a current or former spouse; a person with whom the victim shares a child; a person cohabitating with or who has cohabitated with the victim, a relative, or a person with whom the employee or family member has or had a dating relationship.

3. **Abusive Behavior** as defined under the Domestic Violence Leave Act and this policy includes any behavior constituting domestic violence, stalking, sexual assault or kidnapping.

4. **Family Member** for purposes of this Policy is defined as spouse, parent, step-parent, child, step-child, sibling, grandparent and grandchild; persons in a substantive dating or engagement relationship and who reside together, persons having a child in common regardless of whether they have ever married or resided together, and persons in a guardianship relationship.

### E. PROCEDURE

1. Employees will be permitted to take up to 15 (fifteen) days of unpaid leave from work in any 12 (twelve) month period if each of the following conditions is met:

- (a) The employee, or a family member of the employee, is a victim of abusive behavior;
  - (b) The employee is using the leave from work to:
    - (i) Seek or obtain medical attention, counseling, victim services or legal assistance;
    - (ii) Secure housing;
    - (iii) Obtain a protective order from a court;
    - (iv) Appear in court or before a grand jury;
    - (v) Meet with a District attorney or other law enforcement official
    - (vi) Attend child custody proceedings; or
    - (vii) Address other issues directly related to the abusive behavior against the employee or family member of the employee.
  - (c) The employee is not the perpetrator of the abusive behavior against such employee's family member.
2. Except in cases of imminent danger to the health or safety of an employee, an employee seeking leave from work under this Policy shall provide appropriate advance notice of leave.
- (a) If there is a threat of imminent danger to the health or safety of an employee or the employee's family member, the employee shall not be required to provide advance notice of leave; provided, however, that the employee shall notify the Town within three (3) workdays that the leave was taken or is being taken pursuant to this Policy.
    - (i) Notification may be communicated to the Human Resources Department by the employee, a family member of the employee or the employee's counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the employee in addressing the effects of the abusive behavior on the employee or the employee's family member.
  - (b) In response to a notice of leave under this policy, the Town may request documentation evidencing the need for the leave consistent with this policy. The Town shall not require, however, evidence of an arrest, conviction, or other law enforcement documentation in response to such notice. An employee shall provide such documentation within a reasonable period of time after the request.

An employee satisfies a request for documentation under this Policy by providing any one of the following:

- (i) A protective order, order of equitable relief or other documentation issued by a court of competent jurisdiction as a result of abusive behavior against the employee or employee's family member;
- (ii) A document under the letterhead of the court, provider or public agency which the employee attended for the purpose of acquiring assistance as it relates to the abusive behavior against the employee or the employee's family member;
- (iii) A police report or statement of a victim or witness provided to police, including a police incident report, documenting the abusive behavior complained of by the employee or the employee's family member;
- (iv) Documentation that the perpetrator of the abusive behavior against the employee or family member of the employee has admitted to sufficient facts to support a finding of guilt of abusive behavior; or has been convicted of, or has been adjudicated a juvenile delinquent by reason of, any offense constituting abusive

behavior and which is related to the abusive behavior that necessitated the leave under this Policy;

- (v) Medical documentation of treatment as a result of the abusive behavior complained of by the employee or employee's family member;
  - (vi) A sworn statement, signed under the penalties of perjury, provided by a counselor, social worker, health care worker, member of the clergy, shelter worker, legal advocate or other professional who has assisted the employee or the employee's family member in addressing the effects of the abusive behavior; or
  - (vii) A sworn statement, signed under the penalties of perjury, from the employee attesting that the employee has been the victim of abusive behavior or is the family member of a victim of abusive behavior. Such sworn statements will be maintained in the employee's record by the Human Resources department only for as long as required to make a determination as to whether the employee is eligible for leave.
- (c) If an unscheduled absence occurs, the Town will not take any negative action against the employee if the employee, within thirty (30) days from the unapproved absence, or within thirty (30) days from the last unapproved absence in the instance of consecutive days of unapproved absences, provides any one of the documents listed in paragraph b.(i)-(vii) above to the Town's Human Resources Department.
- (d) All information regarding Domestic Violence Leave will be kept confidential and not disclosed, except to the extent that the disclosure is allowed under the Domestic Violence Leave Act.

Employees seeking leave under this policy must exhaust any accrued but unused vacation, personal, and/or sick leave before requesting or taking Domestic Violence Leave under this policy. When paid leave is used, the employee must follow the Town's paid leave policies and procedures with respect to use of such leave.

- 3. Domestic Violence Leave under this policy shall be unpaid leave.
- 4. While on Domestic Violence Leave, the employee will be responsible for his/her share of the following withholdings (where applicable): medical, dental, life insurance, long- and/or short-term disability and other voluntary withholdings.
- 5. The employee, upon return from leave, will be returned to the same or an equivalent position in accordance with the conditions provided for such reinstatement under applicable law.

**F. PROCEDURAL RULES**

The Human Resources Department may issue procedural rules and guidelines to carry out this policy.

Approved: Board of Selectmen      Date: May 18, 2015

<b>DRUG FREE WORKPLACE POLICY AND COMPLIANCE WITH FEDERAL LAW</b>
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**I. Purpose**

We, the Town of Wilbraham, value our employees and recognize each person's need for a safe and healthy work environment. Employees who use illegal drugs and abuse alcohol tend to be less productive, less reliable, more prone to accidents, and more prone to greater absenteeism, resulting in the potential for

increased accidents, costs, and risks to the Town of Wilbraham, its employees, and the public. We are committed to maintaining a safe workplace for our employees and visitors to our premises, and to keeping the workplace free from illegal drug use and misuse of alcohol. As a government contractor (or grantee) with contracts that equal or exceed \$25,000, the Town of Wilbraham is required under the federal Drug Free Workplace Act to ensure it maintains a drug free workplace.

## **II. Scope**

This policy applies to all existing and newly hired part and full time employees unless restricted or modified in a labor agreement. As a condition of employment, employees must agree to abide by this policy and must agree to notify the Town Administrator if convicted of any criminal drug statute for a violation occurring in the workplace, within five (5) days after the conviction.

## **III. Policy**

The Town of Wilbraham prohibits the unlawful manufacture, distribution, dispensing, possession or use of any controlled substance in the workplace. Any employee who violates such prohibitions may be, depending on the circumstances, subject to discipline up to and including discharge. If an employee is convicted of a criminal drug statute for a violation occurring in the workplace, the employee will be required to satisfactorily complete a drug abuse assistance program designed by the Town. The employee may also be subject to discipline depending on the circumstances of each case. The Town recognizes drug dependency as a major health problem. The Town also recognizes drug abuse as a potential health, safety and security problem. Employees needing help in dealing with such problems are encouraged to approach their supervisors.

## **IV. Definitions**

The terms used in the certification requirements stated below are defined by the regulations as follows:

"Controlled Substance" means a controlled substance as provided in subsections 1 through 5 of Section 202 of the "Controlled Substances Act", a copy of which is attached.

"Conviction" means a finding of guilt or imposition of sentence or both by any judicial body charged with responsibility to determine violations of federal or state criminal drug statutes.

"Criminal Drug Statute" means a federal or nonfederal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

"Employee" means any full or part time employee of the Town of Wilbraham and expressly concerns an employee of a contractor or grantee directly engaged in the performance of work under a government contract or grant.

## **V. Procedure**

We, the Town of Wilbraham, reserve the right to test employees for alcohol or drug abuse, and will comply with the requirements for testing of the U.S. Department of Transportation and other Federal and State laws and regulations. Employees working under or supporting certain grant activities will be required to comply with the rules of the Federal Drug Free Workplace law. We therefore forbid unlawful use or possession of alcohol and controlled substances. Also forbidden is the unauthorized possession in Town vehicles or on Town premises of alcohol and controlled substances. Finally, of course, we forbid the use of or working under the influence of alcohol or controlled substances while on duty on Town premises, or in a Town vehicle.

To meet the certification requirements of the Act, the Town will provide a drug free workplace by doing the following:

- a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the contractor's workplace, and specifying the actions that will be taken against employees for violation of such prohibition;

- b) Establishing a drug free awareness program to inform employees about: (1) the dangers of drug abuse in the workplace; (2) the Town policy of maintaining a drug free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that must be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Providing all employees engaged in the performance of the contract or grant with a copy of the statement required by subparagraph (a);
- (d) Notifying all employees that, as a condition of employment on a covered contract, or under the grant, the employee will: (1) abide by the terms of this statement; and (2) notify the Town of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- (e) Notifying the contracting officer or granting agency within ten (10) days after receiving notice from an employee or otherwise receiving actual notice of such conviction;
- (f) Within thirty (30) days after receiving notice of a conviction, imposing the following sanctions or remedial measures on an employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against such an employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

**VI. Breaches of Standard of Conduct**

PENALTIES FOR VIOLATIONS OF THE ACT:

The penalties that can be imposed upon contractors and grantees who violate the Drug Free Workplace Act include:

- (a) Suspension of payments under the contract or grant;
- (b) Suspension or termination of the grant or contract itself; or
- (c) Department of the contractor or grantee for a period not to exceed five (5) years.

ACTIVITY THAT WILL GIVE RISE TO A PENALTY:

- (a) Making a false certification;
- (b) Failing to comply with the certification requirements;
- (c) Having a number of convictions for workplace drug violations as to indicate that the contractor or grantee has failed to make a good faith effort to provide a drug free workplace.

<b>FAMILY AND MEDICAL LEAVE (FMLA) POLICY</b>
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G. INTRODUCTION

The Federal Family and Medical Leave Act of 1993 (“FMLA”) entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons, as explained below.

H. EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits with the Town of Wilbraham (the “Town”), an employee must:

1. Work for the Town;
2. Have worked for the Town for a total of at least twelve months in the prior seven years; and
3. Have worked at least 1,250 hours over the previous twelve months (actual hours worked, not including paid time off).

I. LEAVE ENTITLEMENT

**Section 1.** The Town will grant an eligible employee up to a total of twelve (12) work weeks of unpaid leave during a rolling 12-month period<sup>4</sup> for one or more of the following reasons:

1. For the birth of a son or daughter and to care for the new born son or daughter;
2. For the placement with the employee of a son or daughter for adoption or foster care;
3. To care for an immediate family member (spouse, son or daughter, or parent) with a serious health condition;
4. When the employee is unable to work because of his/her own serious health condition that prevents him/her from performing the functions of his/her job; or
5. For a “qualifying exigency” (as defined in 29 CFR § 825.126) when the employee’s spouse, son, daughter, or parent who is a member of the National Guard or Reserves has been notified of a call or order to active duty in support of a contingency operation. Such qualifying exigency leave does not extend to family members of military personnel in the Regular Armed Forces, state reserve unit, or a state guard unit.

Spouses employed by the Town are jointly entitled to a combined total of twelve workweeks of family leave, except when the leave is needed to care for a son, daughter or spouse with a serious health condition; under such circumstances, such employees may each be eligible for up to 12 weeks of family leave.

Leave for birth or placement for adoption or foster care must conclude within twelve months of the birth or placement.

**Section 2.** The Town will grant an eligible employee up to a total of twenty-six weeks of unpaid FMLA leave for the following reason:

To care for a spouse, son, daughter, parent, or next of kin (i.e., nearest blood relative), who is a member of the Armed Forces (including a member of the National Guard or Reserves) and who is undergoing medical treatment, recuperation or therapy, is an outpatient, or is on the temporary disability retired list, for a serious injury or illness incurred in the line of duty while on active duty in the Armed Forces.

Such 26-week leave period shall only be available for a single 12-month period.<sup>5</sup> To the extent spouses work for the Town, the aggregate number of workweeks available to both spouses shall be

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<sup>4</sup> For the purposes of calculating the 12-month period referred to above, the Town will measure the 12-month period backward from the date of an employee’s request for FMLA leave. Each time an employee takes FMLA leave, the Town will determine the total amount of FMLA leave used by the employee during the preceding 12 months, and the remaining time available to the employee will be the balance of 12 weeks which has not been used.

limited to 26 weeks during the single 12-month period. In addition, any leave taken during that single 12-month period for one of the other qualifying reasons (as noted in this Policy) shall count against the 26 weeks available. (Only 12 of the 26 weeks total may be used for an FMLA-qualifying reason other than to care for a covered service member.)

### **Section 3.**

1. (a) Under some circumstances, employees may take FMLA leave intermittently.  
(b) When intermittent leave is needed to care for an immediate family member, the employee's own illness, or a covered service member, and is for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the Town's operation.
2. The Town may temporarily transfer an employee taking intermittent or reduced schedule leave to an alternative job, with equivalent pay and benefits, that accommodates recurring periods of leave better than the employee's regular job when such leave is foreseeable based on planned medical treatment.
3. Employees of the Town are required to use accrued and applicable paid leave, such as sick, vacation or personal leave, or compensatory time, during their FMLA leave. When paid leave is used, the employee must follow the Town's paid leave policies and procedures with respect to use of such leave.
4. Any leave taken by an eligible employee for any of the reasons covered by this policy will be considered FMLA leave and will be designated as such even if the employee does not specifically identify the time off as FMLA leave.

#### **J. MAINTENANCE OF HEALTH BENEFITS**

The Town will maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. The employee will make arrangements with the Town to pay his or her share of health insurance premiums while on leave. The Town may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

#### **K. JOB RESTORATION**

Upon return from FMLA leave, an employee will be restored to his or her original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.

In addition, an employee's use of FMLA leave will not result in the loss of an employment benefit that the employee earned or was entitled to before using FMLA leave.

#### **L. NOTICE, CERTIFICATION AND STATUS REPORTS**

Employees seeking to use FMLA leave are required, as appropriate, to provide to the Town:

1. NOTICE: Thirty (30) days advanced notice of the need to take FMLA leave when the need is foreseeable, otherwise as soon as is practicable.

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<sup>5</sup> Calculation of the single 12-month period in this Section shall be based off the 12-month period immediately following the first day of such FMLA-qualifying leave. Such 26-week period shall not be based on the rolling measurement noted in Section 1.

2. MEDICAL CERTIFICATION:
  - (a) Medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member, or a covered service member with a serious injury or illness;
  - (b) Second or third medical opinions and periodic re certifications (at the Town's expense) if requested by the Town; and
  - (c) Medical certification and/or fitness for duty certification supporting the employee's ability to return to work as requested by the Town, which the Town may request include a statement from a health care provider that the employee can perform all of the essential functions of the job.
3. QUALIFYING EXIGENCY: Certification supporting the need for leave due to a qualifying exigency.
4. STATUS REPORTS: Periodic reports during FMLA leave regarding the employee's status and intent to return to work as requested by the Town.

M. OTHER PROVISIONS

This Policy shall at all times be interpreted in a manner consistent with the Department of Labor's Regulations pertaining to the Family and Medical Leave Act of 1993. The FMLA does not affect any other federal or state law that prohibits discrimination, nor supersede any state or local law that provides greater family or medical leave protection. Nor does it affect the Town's obligation to provide greater leave rights under a Collective Bargaining Agreement or employment benefit plan, where applicable.

N. DEPARTMENTAL PROCEDURES

The Town Administrator may establish procedures to implement this policy, consistent with the policy.

O. ADOPTION BY BOARD OF SELECTMEN

This policy was adopted by the Board of Selectmen on April 27, 2009.

**NOTICE: FMLA AMENDMENT**

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.

## NEPOTISM AND FRATERNIZATION POLICY<sup>6</sup>

### A. INTRODUCTION AND PURPOSE

It is the policy of the Town of Wilbraham to avoid hiring individuals or promoting employees based on a family relationship which may be, or create an appearance of, a conflict of interest or favoritism.

Similarly, romantic relationships between employees, even if consensual, can create an appearance of or an actual conflict of interest, especially when the employees are supervisor and subordinate in the same department. Such relationships can negatively affect performance and cause morale problems and may violate the Massachusetts Conflict of Interest Law (M.G.L. c. 268A).

### B. Policy

#### 1. NEPOTISM.

- (a) The Town should generally avoid the hiring, transfer, or promotion of relatives of officials or employees into situations where the possibility of favoritism or a conflict of interest exists.
- (b) Specifically, the Town should generally avoid hiring, promoting or transferring individuals or employees into a department where a relative is employed nor should applicants be hired or employees promoted or transferred into a position where an employee or official occupies a supervisory position in the chain of command over the position for which the relative would be employed, promoted, or transferred.
- (c) For purposes of this policy, a “relative” includes:

Father	Wife	Uncle
Mother	Father-in-Law	Aunt
Son	Mother-in-Law	Nephew
Daughter	Son-in-Law	Niece
Brother	Daughter-in-Law	Grandfather
Sister	Brother-in-Law	Grandmother
Husband	Sister-in-Law	Grandchild
		First Cousin

#### 2. FRATERNIZATION.

- (a) To avoid the problems associated with fraternization of employees, the Town strongly discourages all workplace relationships of a romantic nature.
- (b) The Town prohibits dating between supervisors and the subordinates they supervise.

<sup>6</sup> This Policy is intended to supplement the state conflict of interest law contained in Chapter 268A of the Massachusetts General Laws by providing guidance with respect to the hiring and promoting of individuals or employees to avoid the appearance of favoritism.

- (c) Relationships included within this policy are marriage, dating, cohabitation, or any other relationship that creates the appearance of favoritism or an actual conflict of interest.
- (d) If such relationships develop, it is the responsibility of senior management to take appropriate action, after consultation with the parties.
- (e) Such action may include, but is not limited to:
  - (i) Transfer or reassignment, preferably with voluntary participation of the parties;
  - (ii) Removal of the supervisor from any activity or decision directly or indirectly affecting the subordinate, including work assignments, performance evaluation, compensation, bonus or promotion;
  - (iii) Termination of employment.
- (f) This policy will be applied in accordance with applicable state and federal laws. Non-consensual relationships of a romantic or sexual nature are addressed in the Town's Sexual Harassment Policy, and are prohibited by law and Town Policy.

**C. Disclosure.**

Any individual who applies for a position with the Town or for a promotion shall notify the Appointing Authority of any "relative(s)" who are currently employed by the Town in any capacity, as provided by Chapter 268A, and under Section III, A (3) of this Policy.

**D. Exception to Policy.**

The Town reserves the right to make exceptions to this policy when in the best interest of the Town as determined by the Town, in its sole discretion.

**E. Administrative Procedures.**

The Town Administrator may implement administrative procedures necessary to implement this policy.

**ADOPTION BY THE BOARD OF SELECTMEN.**

This Policy was adopted by the Board of Selectmen on June 15, 2015.

<b>PARENTAL LEAVE POLICY</b>
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**A. INTRODUCTION**

In accordance with Massachusetts General Laws Chapter 149 Section 150D, effective April 7, 2015, full-time employees<sup>7</sup> of the Town who meet the eligibility requirements as provided below, will be entitled to Parental Leave for the birth, adoption or placement of a child.

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<sup>7</sup> For purposes of this policy, an employee who is scheduled to work at least 35 hours per week is deemed to be a "full-time" employee.

## B. EMPLOYEE ELIGIBILITY

To be eligible for Parental Leave, employees must have been employed full-time by the Town for at least three (3) consecutive months.

## C. LEAVE ENTITLEMENT

An eligible employee will be granted an unpaid leave of absence of up to eight (8) weeks for the birth of a child or placement of a child under the age of 18, (or under the age of 23 if the child is mentally or physically disabled) where the employee adopts or intends to adopt the child.

If two employees who work for the Town apply for such leave for the birth or adoption of the same child, they shall only be entitled to a combined total of eight (8) weeks of parental leave.

## D. FAMILY AND MEDICAL LEAVE (FMLA)

An eligible employee may take Parental Leave under this policy, even if he/she is not eligible for FMLA leave or has exhausted her/his entitlement to FMLA leave. If however, an employee is also eligible for FMLA leave, leave taken under this policy will run concurrently with an employee's Family and Medical Leave.

## E. USE OF PAID LEAVE

Although Parental Leave is unpaid, an employee may voluntarily elect to use paid leave (vacation, and personal leave, and paid sick leave in instances where the provisions of sick leave apply). Any such use of paid leave will be in accordance with the Town's leave policies.<sup>8</sup>

## F. MAINTENANCE OF HEALTH BENEFITS

The Town will maintain group health insurance coverage for an employee while on Parental Leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work, as long as the employee is able to pay his/her required share of the cost on a monthly basis. The employee will be responsible for making arrangements with the Town to pay his or her share of health insurance premiums while on leave. Continued coverage is subject to timely premium payments.

## G. BENEFIT CONTINUATION

The use of Parental Leave will not affect the employee's rights to receive vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs and other benefits for which the employee was eligible as of the date of the leave or any other advantages or rights of employment incidental to the employment position; provided, however that the period of time of any unpaid Parental Leave, is not included in the computation of further benefit accruals, rights and advantages.

## H. NOTICE REQUIREMENTS

Employees are required to provide at least two (2) weeks' notice to the employer of the employee's anticipated date of departure and the employee's intended day of return, provided, however, an employee may provide notice "as soon as practicable" if the delay in providing notice is "for reasons beyond the individual's control."

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<sup>8</sup> In accordance with the Massachusetts Parental Leave Act, employees cannot be required to use accrued paid vacation leave, personal leave, or accrued sick leave with all or part of the employee's parental leave, even if the employer requires employees who take leave for other types of reasons to use such paid leave benefits.

I. JOB RESTORATION

Upon return from Parental Leave, every effort will be made to restore an employee to his or her original job. If that is not possible, to an equivalent job with equivalent pay and other employment terms and conditions, unless other employees of equal length of service, status and in similar positions have been laid off due to a legitimate reduction in work force. The employee on paternity leave shall, however, retain any preferential consideration for another position to which she/he may be entitled as of the date of her/his leave, to the extent that the Town has such a policy. An employee's use of Parental Leave will not result in the loss of an employment benefit that the employee earned or was entitled to before using Parental Leave.

J. LEAVE OF ABSENCE BEYOND EIGHT (8) WEEKS

If an employee on Parental Leave is not subject to FMLA he/she may request additional unpaid leave for parenting by petitioning the Appointing Authority. The employee shall be eligible for the rights under Section I above, unless the Appointing Authority notifies the employee in writing prior to the parental leave and again prior to the extension of that leave, that taking longer than eight (8) weeks of parental leave may result in a denial of reinstatement or loss of other rights and benefits.

K. DEPARMTENTAL PROCEDURES

The Town Administrator may establish procedures to implement and carry out this policy, consistent with the policy.

L. ADOPTION BY BOARD OF SELECTMEN

This policy was adopted by the Board of Selectmen on October 5, 2015.

**HARASSMENT OF INDIVIDUALS IN PROTECTED CLASSES:<sup>9</sup>  
POLICY AND PROCEDURES**

POLICY

**1. Introduction**

The Town of Wilbraham (the "Town") depends upon a work environment of tolerance and respect for the achievement of its goals. The Town is committed to providing a working environment that is free of all forms of abuse or harassment. The Town recognizes the right of all employees to be treated with respect and dignity.

Harassment on the basis of race, religion, color, national origin, ancestry, gender, age,\* military status, physical or mental disability, sexual orientation,\* genetic information, or pregnancy and pregnancy related conditions (hereafter referred to as "protected class harassment") is a form of behavior that adversely affects the employment relationship. It is prohibited by Federal and/or State law. Protected class harassment of individuals occurring in the workplace or in other settings in which individuals of the Town may find themselves in connection with their employment is unlawful and will not be tolerated by the Town. The Town also condemns and prohibits protected class harassment by any applicant, client, vendor or visitor.

<sup>9</sup> Sexual harassment is covered by a separate policy, which has been issued to all employees.

\* As defined by law

Because the Town takes allegations of protected class harassment seriously, we will respond promptly to complaints of protected class harassment and where it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate, including discharge.

It is important to note that while this policy sets forth our goals of promoting a workplace that is free of protected class harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of protected class harassment.

## **2. Definition of Protected Class Harassment**

Protected class harassment refers to behavior, which is not welcomed by the employee, which is personally offensive to him or her, and which undermines morale and/or interferes with the ability of the employee to work effectively. While it is not possible to list all of the circumstances that may constitute protected class harassment, depending upon the totality of the facts, including the severity of the conduct and its pervasiveness, following is a list of situations that could constitute protected class harassment.

- (a) verbal abuse on the basis of any protected status;
- (b) use of words that degrade a protected class or person because of his/her protected class status;
- (c) jokes or language about a protected class;
- (d) obscene or suggestive gestures or sounds intended to relate to the protected class;
- (e) teasing related to the protected class;
- (f) verbal comments of a nature about an individual's appearance or terms used to describe an individual that are related to the individual's protected class;
- (g) verbal abuse, comments, jokes, teasing or threats directed at a person because of his/her protected class status;
- (h) posting or distributing objects, pictures, cartoons or other materials degrading to the protected class or a person because of his/her protected class status;
- (i) letters or notes that degrade the protected class or a person because of his/her protected class status;
- (j) sending offensive or discriminatory messages or materials through the use of electronic communications (e.g., electronic mail, including the Internet, voice mail and facsimile) which are degrading to the protected class or a person because of his/her protected class status;
- (k) condoning harassment on the basis of protected class.

Harassment on the basis of protected class status is not limited to behavior by a non-member of the protected class. Protected class harassment can occur in a variety of circumstances. Here are some things to remember:

- (l) The harasser does not have to be the victim's supervisor;
- (m) A member of the protected class may be victimized by another member of the protected class;
- (n) The victim does not have to be the person at whom the unwelcome protected class harassment is directed. The victim may be someone who is affected by the harassing conduct, even when it is directed toward another person, if the conduct creates an

intimidating, hostile, or offensive working environment for the co-worker or interferes with the co-worker's work performance;

### **3. Individual Responsibilities**

Each individual of the Town is personally responsible for:

- (a) ensuring that his/her conduct does not harass any other employee or person with whom the employee comes in contact on the job, such as an outside vendor;
- (b) cooperating in any investigation of alleged protected class harassment by providing any information he/she possesses concerning the matter being investigated;
- (c) actively participating in efforts to prevent and eliminate protected class harassment and to maintain a working environment free from such discrimination; and
- (d) ensuring that an employee who files a protected class harassment claim or cooperates in an investigation may do so without fear of retaliation or reprisal.

### **4. The Rule**

It is, therefore, against the policy of the Town for any individual, whether a member of a protected class or not, to harass another individual on the basis of protected class status by:

- (a) making submission to such conduct either implicitly or explicitly a term or condition of an employee's employment;
- (b) making submission to, or rejection of, such conduct by an individual the basis for employment decisions affecting the employee;
- (c) intending to or having the effect of interfering with an individual's work performance; or
- (d) by creating a hostile or intimidating work environment for the employee.

It is also against the policy of the Town for an individual to harass any person with whom the employee comes in contact on the job or to engage in any protected class harassment or inappropriate or unprofessional conduct in the workplace.

### **5. Retaliation**

Retaliation against an individual for filing a complaint of protected class harassment or against any individual for cooperating in an investigation of a protected class harassment complaint is against the law.

#### **F. VIOLATION OF POLICY**

Any individual violating this policy will be subject to appropriate discipline, including possible discharge.

#### **G. PROCEDURES FOR COMPLAINTS**

##### **1. Complaint**

The Town has designated the Human Resources Coordinator as the Protected Class Harassment Grievance Officer. He/she can be reached at the Office of the Board of Selectmen of the Town of Wilbraham, 240 Springfield Street, Wilbraham, MA 01095 or by calling (413) 596-2800, extension 100. If you would prefer, you may contact the Town Administrator, who has been designated as the Alternate Protected Class Harassment Grievance Officer. He/she can be reached at 240 Springfield Street, Wilbraham, MA 01095 or by calling 413-596-2800 extension 103.

If any individual believes he or she has been subject to protected class harassment on the basis of his/her protected class, the individual should initiate a complaint by contacting the Protected Class Harassment Grievance Officer as soon as possible. The individual should file the complaint promptly following any incident of protected class harassment. The individual should be aware that the longer the period of time between the event giving rise to the complaint and the filing, the more difficult it will be for the Protected Class Harassment Grievance Officer to reconstruct what occurred. The individual will be requested to write out his or her complaint to document the charge.

If an employee prefers to discuss a possible protected class harassment problem with his or her supervisor, the employee may always do so, but employees do not have to go through the regular chain of supervision when reporting protected class harassment and may go directly to the Grievance Officer.

## **2. Investigation**

On receiving the complaint, the Protected Class Harassment Grievance Officer or the Alternate Protected Class Harassment Grievance Officer will promptly have a preliminary investigation made into the matter. If after the completion of this preliminary investigation it is determined that there is reasonable cause for finding a violation of this policy, the Town will notify the complainant and the charged employee of the finding orally. The charged employee will be requested to respond to the complaint. Additional investigation will be made to the extent appropriate in each case. This process will be confidential to the extent consistent with an effective investigation, subject to the business needs of the Town.

## **3. Decision**

After the response of the charged individual has been made, and any further investigation which may be warranted has been carried out, the Town will make a final decision. If the Town finds that the allegations in the complaint have been established by the investigation, the Town will initiate discipline of the charged individual. Discipline will be appropriate to the offense and employees involved, and may include discharge.<sup>10</sup>

The complainant will be notified of the disposition of the investigation.

## **H. STATE AND FEDERAL AGENCIES**

The Massachusetts Commission Against Discrimination (“MCAD”), located at One Ashburton Place, Boston, MA 02108, and 436 Dwight Street, Springfield, MA 01103, is responsible for enforcing the Massachusetts discrimination and protected class harassment law, and the U.S. Equal Employment Opportunity Commission (“EEOC”) is responsible for enforcing the federal law prohibiting protected class harassment. The EEOC is located at JFK Federal Office Building, Government Center, Room 475, Boston, MA 02203. They may be contacted at the above addresses. A complaint to the MCAD must be filed within 300 days. A complaint under the federal law should be filed within 180 days, but under certain circumstances, a federal complaint may be filed within 300 days.

Reviewed and recommended for adoption by the Personnel Advisory Board at their meeting on May 6, 2009. Adopted by the Board of Selectmen on August 3, 2009. Amended by Board of Selectmen on 9/17/2018 to add pregnancy and pregnancy related conditions as a protected class. Amended by Board of Selectmen on 11/26/2018 to add ancestry and change creed to religion.

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<sup>10</sup> Employees of the Town that are members of a bargaining unit shall be subject to discipline in accordance with the terms of the applicable Collective Bargaining Agreement.

# SEXUAL HARASSMENT:<sup>11</sup> POLICY AND PROCEDURES

## POLICY

### 1. Introduction

The Town of Wilbraham (the “Town”) depends upon a work environment of tolerance and respect for the achievement of its goals. The Town is committed to providing a working environment that is free of all forms of abuse or harassment. The Town recognizes the right of all employees to be treated with respect and dignity.

Sexual harassment is a form of behavior that adversely affects the employment relationship. State and Federal law prohibit such behavior. Sexual harassment of individuals occurring in the workplace or in other settings in which individuals of the Town may find themselves in connection with their employment is unlawful and will not be tolerated by the Town. The Town also condemns and prohibits sexual or other harassment by any applicant, client, vendor or visitor.

Because the Town takes allegations of sexual harassment seriously, we will respond promptly to complaints of sexual harassment and where it is determined that inappropriate conduct has occurred, we will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate, including discharge.

It is important to note that while this policy sets forth our goals of promoting a workplace that is free of sexual harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, regardless of whether that conduct satisfies the definition of sexual harassment.

### 2. Definition of Sexual Harassment

Sexual harassment does not refer to purely voluntary social activities. It refers to behavior which is not welcomed by the employee, which is personally offensive to him or her, and which undermines morale and/or interferes with the ability of the employee to work effectively. While it is not possible to list all of the circumstances that may constitute sexual harassment, depending upon the totality of the facts, including the severity of the conduct and its pervasiveness, following is a list of situations that could constitute sexual harassment.

- (a) verbal abuse of a sexual nature;
- (b) use of sexually degrading words;
- (c) jokes or language of a sexual nature;
- (d) conversation or gossip with sexual overtones;
- (e) obscene or suggestive gestures or sounds;
- (f) sexually-oriented teasing;
- (g) verbal comments of a sexual nature about an individual’s appearance or sexual terms used to describe an individual;
- (h) inquiries into one’s sexual experiences;
- (i) discussion of one’s sexual activities;

<sup>11</sup> Harassment of other protected classes is covered by a separate policy, which has been issued to all employees.

- (j) comments, jokes or threats directed at a person because of his/her sexual preference;
- (k) unwelcome and repeated invitations (for lunch, dinner, drinks, dates, sexual relations);
- (l) demand for sexual favors accompanied by an implied or overt threat concerning an individual's employment status or promises of preferential treatment;
- (m) physical contact such as touching, hugging, kissing, stroking, fondling, patting, pinching or repeated brushing up against one's body;
- (n) deliberate bumping, cornering, mauling, grabbing;
- (o) assaults, molestations or coerced sexual acts;
- (p) posting or distributing sexually suggestive objects, pictures, cartoons or other materials;
- (q) sexually-oriented letters or notes;
- (r) sending offensive or discriminatory messages or materials through the use of electronic communications (e.g., electronic mail, including the Internet, voice mail and facsimile) which contain overt sexual language, sexual implications or innuendo, or comments that offensively address someone's sexual orientation;
- (s) staring at parts of a person's body;
- (t) sexually suggestive gestures, leering; and
- (u) condoning sexual harassment.

Sexual harassment is not limited to prohibited behavior by a male employee toward a female employee. Sexual harassment can occur in a variety of circumstances. Here are some things to remember.

- (v) A man as well as a woman may be the victim of sexual harassment, and a woman as well as a man may be the harasser;
- (w) The harasser does not have to be the victim's supervisor;
- (x) The victim does not have to be of the opposite sex from the harasser;
- (y) The victim does not have to be the person at whom the unwelcome sexual conduct is directed. The victim may be someone who is affected by the harassing conduct, even when it is directed toward another person, if the conduct creates an intimidating, hostile, or offensive working environment for the co-worker or interferes with the co-worker's work performance.

### 3. Individual Responsibilities

Each individual of the Town is personally responsible for:

- (a) ensuring that his/her conduct does not sexually harass any other employee or person with whom the employee comes in contact on the job, such as an outside vendor;
- (b) cooperating in any investigation of alleged sexual harassment by providing any information he/she possesses concerning the matter being investigated;
- (c) actively participating in efforts to prevent and eliminate sexual harassment and to maintain a working environment free from such discrimination; and

- (d) ensuring that an employee who files a sexual harassment claim or cooperates in an investigation may do so without fear of retaliation or reprisal.

#### 4. The Rule

It is, therefore, against the policy of the Town for any individual, male or female, to harass another individual sexually, that is, by making unwelcome sexual advances, requests for sexual favors, or other uninvited verbal or physical conduct of a sexual nature when:

- (a) submission to such conduct is made either implicitly or explicitly a term or condition of an employee's employment;
- (b) submission to, or rejection of, such conduct by an individual is made the basis for employment decisions affecting the employee;
- (c) such conduct has the purpose of interfering with an individual's work performance; or
- (d) a hostile or intimidating work environment is created for the employee.

It is also against the policy of the Town for an individual to sexually harass any person with whom the employee comes in contact on the job or to engage in any harassment or inappropriate or unprofessional conduct in the workplace.

#### 5. Retaliation

Retaliation against an individual for filing a complaint of sexual harassment or against any individual for cooperating in an investigation of a sexual harassment complaint is against the law.

#### I. VIOLATION OF POLICY

Any individual violating this policy will be subject to appropriate discipline, including possible discharge.

#### J. PROCEDURES FOR COMPLAINTS

##### 1. Complaint

The Town has designated a Sexual Harassment Grievance Officer. The current Sexual Harassment Grievance Officer is the Town's Human Resources Coordinator, Herta Dane. She can be reached at the Office of the Board of Selectmen of the Town of Wilbraham, 240 Springfield Street, Wilbraham, MA 01095, and her telephone number is (413) 596-2800, ext. 100. If you would prefer, you may contact Robert Weitz, Town Administrator, who has been designated as the Alternate Sexual Harassment Grievance Officer. He can be reached at 240 Springfield Street, Wilbraham, MA 01095, and his telephone number is 413-596-2800 extension 103.

If any individual believes he or she has been subjected to sexual harassment, the individual should initiate a complaint by contacting the Sexual Harassment Grievance Officer as soon as possible. The individual should file the complaint promptly following any incident of alleged harassment. The individual should be aware that the longer the period of time between the event giving rise to the complaint and the filing, the more difficult it will be for the Sexual Harassment Grievance Officer to investigate what occurred. The individual will be requested to write out his or her complaint to document the charge.

If an employee prefers to discuss a possible sexual harassment problem with his or her supervisor, the employee may always do so, but employees do not have to go through the regular chain of supervision when reporting sexual harassment and may go directly to the Grievance Officer.

2. Investigation

On receiving the complaint, the Sexual Harassment Grievance Officer or the Alternate Sexual Harassment Grievance Officer will promptly have a preliminary investigation made into the matter. If after the completion of this preliminary investigation it is determined that there is reasonable cause for finding a violation of this policy, the Town will notify the complainant and the charged employee of the finding orally. The charged employee will be requested to respond to the complaint. Additional investigation will be made to the extent appropriate in each case. This process will be confidential to the extent consistent with an effective investigation, subject to the business needs of the Town.

3. Decision

After the response of the charged individual has been made, and any further investigation that may be warranted has been carried out, the Town will make a final decision. If the Town finds that the allegations in the complaint have been established by the investigation, the Town will initiate discipline of the charged individual. Discipline will be appropriate to the offense and employees involved, and may include discharge subject to the Town's at-will employment policy.<sup>12</sup>

The complainant will be notified of the disposition of the investigation.

K. STATE AND FEDERAL AGENCIES

The Massachusetts Commission Against Discrimination ("MCAD"), located at One Ashburton Place, Boston, MA 02108, and 436 Dwight Street, Springfield, MA 01103, is responsible for enforcing the Massachusetts sexual harassment law, and the U.S. Equal Employment Opportunity Commission ("EEOC") is responsible for enforcing the federal law prohibiting sexual harassment. The EEOC is located at JFK Federal Office Building, Government Center, Room 475, Boston, MA 02203. They may be contacted at the above addresses. A complaint to the MCAD must be filed within 300 days. A complaint under the federal law should be filed within 180 days, but under certain circumstances, a federal complaint may be filed within 300 days.

*Reviewed and recommended for adoption by the Personnel Advisory Board at their meeting on May 6, 2009. Adopted by the Board of Selectmen on August 3, 2009.*

**SAFE HARBOR POLICY**

(Prohibition of improper deductions from the salaries of exempt employees)

The Fair Labor Standards Act (FLSA) is a federal law which requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

However, Section 13(a)(1) of the FLSA provides an exemption from both minimum wage and overtime pay for employees employed as bona fide executive, administrative, professional and outside sales employees. Section 13(a)(1) and Section 13(a)(17) also exempt certain computer employees. To qualify for exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at not less than \$455 per week. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all the requirements of the Department's regulations.

<sup>12</sup> Employees of the Town that are members of a bargaining unit shall be subject to discipline in accordance with the terms of the applicable Collective Bargaining Agreement.

## SALARY BASIS REQUIREMENT

To qualify for exemption, employees generally must be paid at not less than \$455 per week on a salary basis. These salary requirements do not apply to outside sales employees, teachers, and employees practicing law or medicine. Exempt computer employees may be paid at least \$455 on a salary basis or on an hourly basis at a rate not less than \$27.63 an hour. (Part time positions may be classified as “exempt” even when the position does not earn \$455 per week).

Being paid on a “salary basis” means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee’s work. Subject to exceptions listed below, an exempt employee must receive the full salary for any workweek in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any workweek in which they perform no work. If the employer makes deductions from an employee’s predetermined salary, i.e., because of the operating requirements of the business, that employee is not paid on a “salary basis.” If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

### Circumstances in Which the Employer May Make Deductions from Pay:

Deductions from pay are permissible when an exempt employee: is absent from work for one or more full days for personal reasons other than sickness or disability; for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness (paid sick leave); to offset amounts employees receive as jury or witness fees, or for military pay; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions (see town policy on “Progressive Discipline” regarding suspension without pay). Also, an employer is not required to pay the full salary in the initial or terminal week of employment; or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act or the Small Necessities Leave Act. In these circumstances, either partial day or full day deductions may be made.

### Town of Wilbraham Policy

It is the town’s policy to comply with the salary basis requirements of the FLSA. Therefore, the town prohibits all town managers, supervisors or elected and appointed officials from making any improper deductions from the salaries of exempt employees. The town wants employees to be aware of this policy. The town does not allow deductions that violate the FLSA. Retaliation against employees who make good-faith reports of improper deductions will not be tolerated.

### What To Do If An Improper Deduction Occurs

If you believe that an improper deduction has been made to your salary, you should immediately report this information to your direct supervisor or department manager, or to the Town Accountant. If your supervisor and the Town Accountant cannot resolve the issue to your satisfaction, you may file a complaint with the Town Administrator/Assistant Town Administrator. Please submit at a minimum the following information: amount deducted, pay period, and why you think the deduction was improper. Employees are encouraged to use the form attached to this policy. (The form is readily available in the Selectmen’s Office).

Reports of improper deductions will be promptly investigated. If it is determined that an improper deduction has occurred, you will be promptly reimbursed for any improper deduction made.

## **SMALL NECESSITIES LEAVE**

### Purpose:

On August 5, 1998, "an Act Providing Employee Leave for Certain Family Obligations", also known as the Small Necessities Leave Act, went into effect in Massachusetts. The act adds Section 52D to Chapter 149 of the Massachusetts General Laws and provides eligible employees with a total of 24 hours of leave during any 12 month period for three specific purposes:

### Covered Reasons:

- a) to participate in school activities directly related to the educational advancement of a son or daughter of the employee, such as parent-teacher conferences or interviewing for a new school; or
- b) to accompany a son or daughter of the employee to routine medical or dental appointment; or
- c) to accompany an elderly relative (an individual at least 60 years of age and related by blood or marriage to the employee) to routine medical or dental appointments or appointments for other professional services relating to the elder's care, such as interviewing at a nursing home.

### Enforcement:

The Massachusetts Attorney General is empowered to enforce the Act's provisions. Aggrieved employees may also sue for injunctive relief and damages.

### Conditions:

Consistent with FMLA, leave under SNLA is unpaid. It is the Town of Wilbraham's policy to require an employee use any accrued vacation, personal leave or dependent sick leave, during a SNLA Leave, provided that the town will only require an employee's use of dependent sick leave in situations where the sick leave policy applies.

### Covered Employers and Eligible Employees:

The Small Necessities Leave Act borrows definitions contained in the federal Family and Medical Leave Act of 1993. It follows the prerequisites for FMLA leave (i.e. the employee must have worked at least 1,250 hours during the past 12 months).

### Duration of Leave:

A covered employer must grant an eligible employee up to a total of 24 hours of unpaid leave during any 12-month period. The Town of Wilbraham has established the calendar year as the 12-month period during which 24 hours leave must be granted. SNLA may be taken intermittently. This means taking leave in blocks of time rather than a continuous leave.

An employee must provide notice of the need for SNLA at least 7 days prior to the day such leave begins. If the need for the leave was not reasonably foreseeable, then the employee must provide such notice as is practicable.

## **SMOKE-FREE WORKPLACE POLICY**

### MASSACHUSETTS SMOKE-FREE WORKPLACE LAW

The Massachusetts Smoke-free Workplace Law, effective July 5, 2004 amended the Massachusetts General Laws by creating a new Section 22 of Chapter 270. The new law protects workers from health hazards resulting from exposure to secondhand smoke and requires all workplaces with one or more employees to be smoke-free.

The Town of Wilbraham, an employer as defined for purposes of this law, is committed to providing a smoke-free workplace for all employees working in an enclosed space. Secondhand smoke, also known as environmental tobacco smoke (ETS), is the combination of smoke exhaled by a smoker and smoke from a burning cigarette, cigar or pipe. The U.S. Environmental Protection Agency has determined that secondhand

smoke is a Class A carcinogen. This combination is dangerous for both the smoker and the nonsmoker.

Key applicable provisions of the new law:

- The employer is responsible for providing a smoke-free environment for all employees working in an enclosed workspace.
- Smoking is prohibited in common work areas, hallways, conference and meeting rooms, offices, employee lounges, restrooms, staircases, auditoriums, theaters, concert halls and convention centers, museums, libraries, schools, colleges and classrooms, restaurants, bars, taverns, food courts and supermarkets, medical facilities, health facilities, child care centers, camps for school age children, forms of public transportation such as trains, planes, taxis, buses, airports, train and bus stations, terminals and enclosed outdoor platforms; and buildings and vehicles owned or leased by the commonwealth or a political subdivision, such as a city or town.

For a copy of the amended law please visit the Selectmen's Office or go to this website:

<http://www.mass.gov/legis/laws/mql/270-22.htm>

It is prohibited for any persons including employees, volunteers, customers, and visitors to smoke in the following work areas:

All areas inside all buildings owned or controlled by the Town of Wilbraham including but not limited to, the town office building, the senior center and recreation department offices, the fire department, the police department, the library, the public access television studio, the public works building (including the garage), the sewage treatment plant, public works pumping stations, the employee warming sheds and other enclosed areas at the disposal and recycling center, the pavilion and concession stand at the Spec Pond Recreation Area, the Children's Museum, and any other enclosed work space where employees perform services for compensation for the town such as polling places and rooms used for public meetings in locations not owned by the town. Additionally, it is prohibited to smoke inside any town owned or leased vehicle of any kind, at any time. This includes automobiles, trucks, police cruisers, all fire/ambulance/rescue vehicles, all public works vehicles including heavy equipment and any other enclosed vehicles employees may use.

#### Enforcement

The Board of Selectmen/Board of Health has overall responsibility for enforcing the smoke-free workplace law. Questions, complaints or reports of violations should be directed to the Town Administrator or the Assistant Town Administrator, who will answer any questions and promptly investigate the complaint and take remedial action.

A complaint form can be downloaded from the Department of Public Health website at:

[http://www.mass.gov/Eeohhs2/docs/dph/tobacco\\_control/complaint\\_form.pdf](http://www.mass.gov/Eeohhs2/docs/dph/tobacco_control/complaint_form.pdf)

Appropriate remedial action depends on the type of offense, the existence of any prior incidents, and the effectiveness or lack thereof of any prior remedial steps.

Generally, remedial action consists of advising the offending employee, volunteer or visitor to promptly extinguish their cigarette, cigar or pipe or leave the premises. The offending employee, volunteer or visitor will receive a copy of the smoke-free workplace policy.

Employees who are found to violate the smoke-free workplace policy will be disciplined following the guidelines of the town's policy on progressive discipline. Additionally, potential consequences for employees or other persons who smoke in a place where smoking is prohibited and violate the Massachusetts Smoke-Free Workplace Law, include a civil penalty of \$100 for each violation. The Department of Public Health is the enforcement agency charged with promulgating regulations to implement collection and reporting of fines.

Any person may register a complaint to initiate an investigation and enforcement action with the local board of health or the department of public health. The supreme judicial court or the superior court is charged with issuing appropriate orders to enforce the law.

### Retaliation

It is prohibited by law to discriminate or retaliate in any manner against a person for making a complaint of a violation of the smoke-free workplace law or for furnishing information concerning a violation, to a person, entity or organization, or to an enforcement authority. However, a person making a complaint or furnishing information during any period of work or time of employment shall do so only at a time that will not pose an increased threat of harm to the safety of other persons in or about the workplace, or to the public. An employee who retaliates or discriminates against any person or persons for making a complaint under this Policy or for furnishing information concerning a violation of the Smoke-Free Workplace Law or this Policy shall be disciplined up to and including discharged.

### Smoking Areas

Designated smoking areas or smoking rooms are not permitted. However, employees may go outside to smoke during their morning and afternoon break periods. No extra break periods are permitted for smokers in addition to regular break periods afforded non-smokers. Smoking is not permitted in outside areas where “no smoking” signs are posted such as near refueling stations or other areas where open fire is prohibited by any other by-law, fire or health or safety regulation. Smoking is not permitted while performing any work-related job duties for which the employee is compensated.

### Employee Support

The Town of Wilbraham is sensitive to the withdrawal symptoms of nicotine addiction and supports employees in their efforts to quit smoking. Employees who smoke and want to quit or know someone who wants to quit should call the Try-To-Stop Tobacco Resource Center at 1-800-TRY-TO-STOP (1-800-879-8678) for free helpful information, or visit their website at [www.trytostop.org](http://www.trytostop.org). Quitting smoking requires commitment, motivation and resources. While you need to supply your own commitment and motivation, resources are available that have helped thousands of smokers live a tobacco-free life.

You may contact any of the following for assistance:

- Your Primary Care Physician (information about cessation medication)
- Your Health Insurance Provider (information about cessation programs)
- The American Lung Association  
([www.lungusa.org](http://www.lungusa.org) offers a free “Freedom From Smoking” online help program)
- The American Cancer Society ([www.cancer.org](http://www.cancer.org)) offers a free Guide for Quitting Smoking
- The Town’s Employee Assistance Program provided by the Massachusetts Interlocal Insurance Association (MIIA) (Call 24 hours day/ 7 days a week: 1-800-451-1834)

## **WHISTLEBLOWER POLICY**

This policy is adopted pursuant to and in accordance with Massachusetts General Laws, Chapter 149 Section 185 *“Retaliation against employees reporting violations of law or risks to public health, safety or environment; remedies”*, a copy of which is attached hereto.

Employees are advised that Chapter 149 Section 185 protects the employee whistleblower from retaliation under the following circumstances:

1. The employee discloses, or threatens to disclose to a supervisor or to a public body an activity, policy or practice of the employer, or of another employer with whom the employee’s employer has a business relationship, that the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, or which the employee reasonably believes poses a risk to public health, safety or the environment;
2. [the employee] provides information to, or testifies before, any public body conducting an investigation, hearing or inquiry into any violation of law, or a rule or regulation promulgated pursuant to law, or activity, policy or practice which the employee reasonably believes poses a risk to public health, safety or the environment by the employer or by another employer with whom the employee’s employer has a business relationship; or

3. [the employee] objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of a law, or a rule or regulation promulgated pursuant to law, or which the employee reasonably believes poses a risk to public health, safety or the environment.

For the employee to receive protection against retaliation from actions arising under paragraphs 1 or 3, above, the employee is first required to provide written notice of the perceived problem to the Town Administrator and thereafter afford the employer a reasonable opportunity to correct the issue. Statutory exceptions to the written notice requirement exist in the following circumstances:

- a. an employee is reasonably certain that the activity, policy or practice is known to one or more supervisors of the employer and the situation is emergency in nature;
- b. an employee reasonably fears physical harm as a result of the disclosure provided; or
- c. an employee makes the disclosure to a public body for the purpose of providing evidence of what the employee reasonably believes to be a crime.

All complaints must be presented in writing to the Town Administrator, unless one of the statutory exceptions as outlined above applies. If a statutory exemption as outlined above applies, the employee may report the improper governmental action directly to a supervisor, or to another government agency. If no statutory exemption as outlined above applies the employee must first present the complaint in writing to the Town Administrator. The Town Administrator will take prompt action and conduct an investigation of the complaint. The complainant's identity and the nature of the complaint will be held in confidence to the greatest extent possible, however, due to the obligation to conduct an investigation and remedy any unlawful conduct, disclosure may be necessary.

Town officials, administrators, supervisors and employees are prohibited from taking retaliatory action against employees reporting violations of law or risks to public health, safety or environment; under this statute. Employees who believe that they have been retaliated against for reporting a complaint, policy or practice covered under the statute should advise the Town Administrator immediately. The Town Administrator will investigate any complaint of any employee of being harassed, pestered, aggravated, persecuted, threatened, intimidated, coerced, discriminated against or of having adverse employment action taken against. The investigation is subject to and follows the provisions of the town's policy on Harassment and Sexual Harassment.

<p><b>POLICY RELATED TO THE AMERICANS WITH DISABILITIES ACT AND MASSACHUSETTS GENERAL LAWS CHAPTER 151B, SECTION 4(16)</b></p>
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The Town of Wilbraham is committed to providing equal employment opportunities to its applicants and employees who either have an actual disability or a record of a disability, and who are capable of performing the essential functions of their job with or without accommodation, unless such accommodation poses an undue hardship to the Town. The Town does not discriminate in any way against its applicants or employees, including on the basis of handicap or disability.

Individuals who have a physical or mental impairment that substantially limits them in one or more major life activities or major bodily functions may seek an accommodation to either complete the application process or to perform the essential functions of their job. The Town, however, must be made aware of such impairment(s) by the applicant or employee in order to be able to consider the requested accommodation(s).

Consistent with this policy, employees or applicants who, as a result of a disability, believe they need an accommodation to perform the essential functions of their job or to complete the application process should contact the Human Resources department. (approved: Board of Selectmen: August 13, 2012)

**ACKNOWLEDGEMENT FORM - REGULATORY POLICIES**

\_\_\_\_\_  
PRINT NAME OF EMPLOYEE/VOLUNTEER

\_\_\_\_\_  
DATE

**Conflict of Interest**

In accordance with Massachusetts General Laws, Chapter 303 of the Acts of 1975, I hereby attest that I have been furnished a copy of a Summary of the Conflict of Interest Law (MGL Chapter 268A) as amended by Chapter 20, Acts of 2009. I will forward a copy of the printed receipt from the State Ethics Commission Online Training Program, completed in my name, to the Wilbraham Town Clerk, 240 Springfield Street, Wilbraham, MA 01095.

**Drug Free Workplace Notice**

\_\_\_\_\_  
**Signature**

The Drug-Free Workplace Act of 1988 requires federal government contractors and grantees to take specific and affirmative steps to ensure a drug-free workplace. One of the Act's central provisions requires employers to prepare and distribute an anti-drug policy statement prohibiting any drug related activity in the workplace. The Town of Wilbraham's policy regarding drug use and the unlawful possession of controlled substances on Town property is as follows:

It is the intent and obligation of the Town to provide a drug-free, healthful, safe and secure work environment. Employees are expected and required to report to work on time, in appropriate condition for work and free from the influence of illegal drugs. The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance on Town property or while conducting Town business off Town property is absolutely prohibited. Violation of this policy will result in disciplinary action, up to and including termination of employment, and may involve legal action. As mandated by the Drug-Free Workplace Act employees must, as a condition of employment, abide by the terms of the above policy and report any conviction under a criminal drug statute for violations on or off Town property while conducting Town business. A report of a conviction must be made within five (5) days after the conviction. The Town recognizes drug dependency as an illness and a major health problem. The Town also recognizes drug abuse as a potential health, safety and security problem. The Town will provide assistance to an employee having a dependency or use problem by referral to a rehabilitation agency. Employees are encouraged to use this assistance when needed.

\_\_\_\_\_  
**Signature**

**Fair Labor Standards Act/Safe Harbor Policy**

(Prohibition of improper deductions from the salaries of *exempt employees ONLY*)

I hereby acknowledge that I have been given a copy of the Town of Wilbraham's policy on the Fair Labor Standards Act Safe Harbor Policy which prohibits improper deductions from the salaries of exempt employees. I understand that I have the right to file a complaint alleging an improper salary deduction.

**Sexual Harassment Policy and Procedures**

\_\_\_\_\_  
**Signature**

I acknowledge receipt of the "Sexual Harassment Policy and Procedures" revised by the Board of Selectmen of the Town of Wilbraham on August 3, 2009, and I have read its contents.

\_\_\_\_\_  
**Signature**

**Protected Class Harassment Policy and Procedures**

I acknowledge receipt of the "Protected Class Harassment Policy and Procedures" adopted by the Board of Selectmen of the Town of Wilbraham on August 3, 2009, as amended on 9/17/2018, and 11/26/2018, and I have read its contents.

\_\_\_\_\_  
**Signature**

**Communications Policy**

I acknowledge receipt of this *Communications Policy* from the Town, and that I have read it. I understand that all electronic communications and all information transmitted by, received from, or stored in these systems are

the property of the Town. I also understand that I have no expectation of privacy in connection with the use of the Town's electronic communications or with the transmission, receipt or storage of information in these systems. I acknowledge and consent to the Town monitoring my use of its electronic communications at any time, at its discretion. Such monitoring may include reviewing Internet websites visited, printing and reading all e-mail entering, leaving or stored in these systems, reviewing all documents created or downloaded as well as listening to voicemail in the ordinary course of business. I understand that all e-mail messages are subject to the Town's e-mail deletion and retention procedures.

\_\_\_\_\_  
**Signature**

**Family and Medical Leave Act**

I acknowledge receipt of the Family and Medical Leave Act policy revised by the Board of Selectmen of the Town of Wilbraham on April 27, 2009, and I have read its contents.

\_\_\_\_\_  
**Signature**

**Small Necessities Leave Act**

I acknowledge receipt of the Small Necessities Leave Act policy adopted by the Board of Selectmen on January 29, 2001, and I have read its contents.

\_\_\_\_\_  
**Signature**

**Smoke Free Work Place Policy**

I acknowledge receipt of the Smoke Free Work Place Policy revised by the Board of Selectmen on June 13, 2005, and I have read its contents.

\_\_\_\_\_  
**Signature**

**Whistleblower Protection Policy**

I acknowledge receipt of the Whistleblower Protection Policy adopted by the Board of Selectmen on February 23, 2004, and I have read its contents.

\_\_\_\_\_  
**Signature**

**Americans with Disabilities Act & MGL Ch 151B Sec. 4(16):**

I acknowledge receipt of the Policy Related to the Americans with Disabilities Act and Massachusetts General Laws Chapter 151B, Section 4(16), and I have read its contents.

\_\_\_\_\_  
**Signature**

**Domestic Violence Leave Policy**

I acknowledge receipt of the Domestic Violence Leave Policy approved by the Board of Selectmen on May 18, 2015 and have read its contents.

\_\_\_\_\_  
**Signature**

**Nepotism & Fraternalization Policy**

(subject to collective bargaining for IAFF Local 1847 employees)

I acknowledge receipt of the Nepotism and Fraternalization Policy approved by the Board of Selectmen on June 15, 2015 and have read its contents.

\_\_\_\_\_  
**Signature**

**Parental Leave Policy**

I acknowledge receipt of the Parental Leave Policy approved by the Board of Selectmen on October 5, 2015 and have read its contents.

\_\_\_\_\_  
**Signature**

Witness: \_\_\_\_\_

Date: \_\_\_\_\_