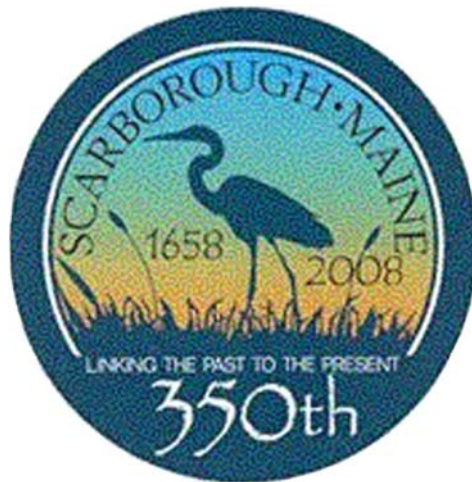


CHAPTER 303

TOWN OF SCARBOROUGH

PERSONNEL ORDINANCE



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Article I. TITLE, AUTHORITY, AND PURPOSE

Section 101. Title. No table of figures entries found.

This ordinance shall be known as and may be cited as the Personnel Ordinance.

Section 102. Authority.

This Personnel Ordinance is enacted pursuant to the Town's home rule powers conferred by Article VIII, part second of the Maine Constitution and Title 30-A, §§2001, 2109 and 3001 of the Maine Revised Statutes Annotated.

Section 103. Statement of Purpose and Applicability.

The purpose of this Personnel Ordinance is to guide the Town Manager and Department Heads in the administration of personnel activities. Presentation of this information to all employees will inform them about their rights as well as their responsibilities while in the employment of the Town of Scarborough. This Ordinance and subsequent modifications shall supersede any policy and rules made previously by the Town Council. This Ordinance applies to all full time, part time and temporary/seasonal employees, as defined herein, except school department employees. In instances where employees are subject to a collective bargaining agreement with provisions differing from the Personnel Ordinance, the terms of the collective bargaining agreement shall prevail. Where the Town Manager is subject to an employment agreement with provisions differing from the Personnel Ordinance, the terms of the employment agreement shall prevail. Elected Town officials and appointed members of Scarborough boards and commissions are not considered employees within the scope of this Personnel Ordinance. (amended 09/05/2007) (amended 08/17/2011)

Article II. GENERAL PROVISIONS

Section 201. Employment.

The Town of Scarborough is an equal opportunity employer. All employees and applicants will be provided equal opportunities, and the Town shall make all its employment decisions without regard to religion, age, sex, sexual orientation (including gender identity and expression), race, color, ancestry, national origin, and physical or mental disability, or any other status protected by law. The Town shall employ, without discrimination, the best qualified persons who are available at the salary levels established for Town employment, first preference being given always to citizens of the Town of Scarborough, all factors being equal.

Within the limits of time during which a position must be filled, there shall be as wide a search for qualified candidates as is practicable. The character of this search will vary from position to position, but will consist of an internal posting for Town employees and may include advertising, open competitive examination, contact with state and other employment offices, and contact with special sources of information in each case. It shall be the duty of the Town Manager, or the appointing authority, to seek out the most desirable employees for the Town. (amended 11/02/94) (amended 09/05/2007)(amended 08/17/2011)

Applications for employment shall be filed on forms provided by the Town. Applications will be accepted only for positions for which a vacancy exists. Application forms will usually have to be signed by the applicant to be accepted.(amended 08/17/2011)

Section 202. Employee Designations.

A. Full-Time Employees.

A full-time employee is one who is scheduled for at least 35 hours per week fifty-two weeks per year and is appointed for a term greater than six months or for an indefinite term.

B. Part-Time Employees.

A part-time employee is appointed for a term longer than six months or for an indefinite term, works regularly scheduled hours and is scheduled for less than 35 hours per week. Per diem firefighters, inspectors, and rescue unit personnel employed in the Fire/Rescue Department are part-time employees regardless of the number of hours scheduled or worked per week. (amended 08/17/2011)

C. Temporary/Seasonal Employees.

A temporary/seasonal employee is one whose appointment is for a specified period of six months or less. Temporary/seasonal employees may work in different capacities throughout a year. Each different capacity is considered a separate appointment. (amended 08/17/2011)

Section 203. Probation.

All employees are considered probationary for the first 180 days of employment. Any break in employment lasting longer than two weeks during the probationary period, including but not limited to absence for medical reasons or military leave, shall not be credited towards the probationary period. Every employee must successfully complete the probationary period to continue employment. Probationary employees shall be evaluated by their immediate supervisor prior to the end of the probationary period and will be informed whether they have successfully completed the probationary period no later than by the end of the probationary period. (amended 02/06/02) (amended 09/05/2007)

Section 204. Promotion.

Town employees shall be given the opportunity for advancement in the service. Present employees shall be given first consideration in filling a vacancy, when qualified employees are interested in the vacancy. Employees may be transferred to a new position without a loss in seniority, pay or job grade to a vacant position by a department head with the Town Manager's approval or by the Town Manager when filling a position appointed by the Town Manager, with or without posting the position, when the Town Manager determines the action will benefit the Town. Present employees may be given training opportunities to qualify for promotion, but it is recognized that, from time to time, the good of the service will require that a vacancy be filled from outside the service. Such a decision shall be made only after careful review of the qualifications of all Town employees who apply for the position. (amended 11/02/94)

Section 205. Compensation.

To the extent feasible, it is the intent to pay Town employees a basis that is commensurate with salaries and wages for comparable public and private work in the area in order to attract and retain well qualified employees.

Section 206. Training.

Both the Town and its employees profit from the provision of educational training opportunities at reasonable expense to the Town. Training programs shall be designed to improve the quality of performance and bring about more efficient or more economical operation. Employees will have to receive approval for training programs in advance from the Town Manager or Department Head, if attendance during normal working hours or reimbursement of tuition and/or expenses is expected.

Article III. CONDITIONS OF EMPLOYMENT

Section 301. Hours of Work.

It is necessary, owing to the variations in the different services provided by the Town, that there be variations in the hours of work per week in positions of the same class in different departments. Normal working hours for each department shall be established by the Town Manager.

Section 302. Overtime.

Hourly employees generally will be compensated for overtime work at the rate of one and one-half times the established hourly rate for hours worked in excess of forty hours in a work week, except that the normal work week for employees in the Fire/Rescue Department shall be established by the Fire Chief subject to the approval of the Town Manager. For purposes of this section, hours worked shall include sick leave, vacation, compensatory time and bereavement. Hours worked on Christmas Day (12:00 a.m. to 12:00 mid-night December 25) shall be paid at the rate of one and one-half (1 ½) times the base hourly rate. The Town may offer employees compensatory leave on the basis of one and one-half hours of compensatory leave per overtime hour worked if the employee elects in writing to receive compensatory leave rather than overtime in advance of working the excess hours. Employees may not accrue compensatory leave exceeding departmental limits established by the Department Head and the Town Manager; therefore, employees whose accrued compensatory leave is at or near the established maximum will not be offered the option of compensatory leave. Upon termination of employment, employees will be paid for unused compensatory time at the average regular rate paid during the last three years of employment or the final regular rate paid during employment, whichever is higher. Salaried positions (usually professional, managerial or supervisory positions) are compensated on the basis of job responsibility, not hours worked, and it is the responsibility of the person filling the position to accomplish the assigned responsibilities in a timely manner. The Town Manager shall establish a uniform and consistent compensatory time policy for salaried employees, which policy shall allow compensatory time off at a time convenient for the Town when a salaried employee's duties require the employee to work in excess of 50 hours per week. Compensatory time may not be accumulated in excess of 50 hours. (amended 2/17/99) (amended 09/05/2007) (amended 08/17/2011)

Section 303. Attendance at Work.

Employees shall be at their respective places of work in accordance with town or departmental regulations pertaining to normal hours of work. All department heads shall keep daily attendance records and furnish to the Town Manager periodic reports upon request. In the event of necessary absence because of illness or any other cause, it is the responsibility of employees to

see that their department head is advised of the reason for absence as soon as possible and at least before the time that the employee is expected to report to work.

Absences from work for any reason for a cumulative period of six months in the period of one year will form the basis for termination of employment except as otherwise provided by law. (amended 09/05/2007)

Section 304. Workplace Injuries.

The Town of Scarborough provides Workers' Compensation Insurance coverage for all employees.

An employee who sustains a personal injury or compensable illness arising out of and in the course of his/her employment with the Town shall be paid during the first four weeks of incapacity to work resulting from the injury an amount sufficient, when added to the weekly payment of worker's compensation, to equal his/her regular salary or normal wage (the "supplemental payment"). To avoid gaps in employee income while supplemental payments are being made, the Town may continue to pay an employee's normal wage or regular salary if the employee agrees, in writing, to turn over worker's compensation payments to the Town upon receipt. No supplemental payments shall be made if, in the opinion of the Department Head and Town Manager, the accident occurred as a result of intoxication, willfulness, the violation of rules and regulations on the part of the employee, or while the employee is in the employ of any other person, firm or corporation. Supplemental payments shall not be continued beyond four weeks except upon written authorization of the Town Manager. (amended 09/05/2007)

Section 305. Policy on Workplace Threats And Violence.

The safety and security of employees of the Town of Scarborough, and also the public who conducts business in the various municipal buildings, is of paramount importance to the Town. Therefore, threats, threatening behavior or acts of violence against or by employees, visitors, guests or other individuals on Town property will not be tolerated. Violations of this policy may lead to disciplinary action of employees, which may include dismissal and may lead to arrest and prosecution of employees or others.

Any person who makes threats, exhibits threatening behavior or engages in violent acts on Town property will be removed from the premises as quickly as safety permits. The Town will initiate any actions necessary to ensure that employees and the public are safe on Town property.

All Town personnel are responsible for notifying the Town representative designated below of any threats that they have witnessed, received or have been told that another person has witnessed or received. Even without an actual threat, personnel should also report any behavior they have witnessed that they regard as threatening or violent when that behavior is job-related or might be carried out on a Town-owned site, or is connected to Town employment. Employees are responsible for making this report regardless of the relationship between the individual who initiated the threat or threatening behavior and the person or persons who were threatened or were the focus of the threatening behavior. If the designated Town representative is not available, personnel should report the threat to their supervisor or the Town Manager.

All individuals who apply for or obtain a protective or restraining order which lists any Town location as being a protected area must provide to the designated Town representative a copy of the petition and declarations used to seek the order, a copy of any temporary protective or restraining order which is granted, and a copy of any protective or restraining order which is made permanent.

The Town of Scarborough understands the sensitivity of information regarding threats or threatening behavior and will recognize and respect the privacy of the reporting employee(s) or citizen(s) to the extent permitted by law.

The designated Town representative is: the Director of Human Resources (730-4026). (amended June 7, 2000).

Section 306. Progressive Discipline.

The Town has a policy of progressive discipline of employees, which means that repeated instances of poor job performance or misconduct will be subject to progressively more severe sanctions, which may include oral or written warnings, counseling, suspension with or without pay, demotion or termination. Progressive discipline does not mean that the initial disciplinary response to unsatisfactory job performance or misconduct will always be the same. Serious job performance problems or misconduct such as, but not limited to, dishonesty, violence or theft, harassment, alcohol or illegal drug use may result in more severe disciplinary sanctions, up to and including dismissal, even on the first occurrence. (amended 08/17/2011)

When in the judgment of the appointing authority, whether a Department Head or the Town Manager, an employee's work performance or conduct justifies disciplinary action, the employee may be disciplined. Consideration shall be given to the severity of the performance problem or misconduct and prior disciplinary sanctions, if any, against the employee prior to imposing any discipline. Repeated misconduct or continuing performance problems may be considered cumulative, and subject to progressively more severe discipline, even if the conduct or performance problems vary in nature or severity.

Except in cases of emergency, no employee may be suspended by a Department Head until the Town Manager ratifies the decision. No employee shall be suspended for more than three days without first being given an opportunity to discuss the incident or incidents underlying the suspension with either the Town Manager or Department Head, whoever initiated the suspension.

Section 307. Disciplinary Dismissals.

An employee may be dismissed for cause whenever in the judgment of the appointing authority the employee's work or misconduct so warrants, subject to the appeals provisions set forth in §1003 of the Scarborough Town Charter. Prior to making a final decision to demote or dismiss an employee, the Department Head or Town Manager (whoever is the appointing authority) shall inform the affected employee of the action under consideration, along with the reasons therefore, and shall provide the employee an opportunity for an informal meeting to discuss the employee's version of the events and circumstances at issue. Prior discussion with the employee is not required when in the judgment of the Department Head or Town Manager the employee's conduct or job performance creates an immediate threat of injury to the employee, any other

Town employee, or members of the public, provided that the employee shall be treated as suspended with pay until such time as an opportunity for an informal meeting is offered. Removal of an employee appointed by a department head shall be subject to ratification by the Town Manager and removal of an employee appointed by the Town Manager shall be subject to ratification by the Town Council.

Section 308. Appeals.

Any employee who has been removed for disciplinary reasons or suspended without pay may appeal to the Personnel Appeals Board, provided that an appeal must be filed in writing with the Town Manager within 10 days of the decision or of ratification by the Town Manager or the Town Council, if ratification of the removal or suspension is required by the Scarborough Town Charter. Upon request, the Human Resources Director or Department Head will assist any employee who needs such assistance to file a written appeal. This Paragraph shall not apply to lay-offs and reductions in force, whether by elimination of positions or separation of employees, or other terminations or suspensions not attributable to cause. (amended 09/05/2007)

Section 309. Internal Complaint/Grievance Procedure.

Any employee aggrieved because of some condition of his/her employment other than disciplinary actions subject to sections 306 and 307 hereof or lay-offs subject to section 310 hereof shall have the right, and shall be expected, to appeal to his/her immediate supervisor or Department Head. The grievance must be made in writing to the employee's immediate supervisor or Department Head within five (5) working days from the incident. The Department Head shall make an effort to settle the grievance within three days after the presentation.

If a satisfactory settlement cannot be reached, the employee may appeal within five (5) working days of the Department Head's decision to the Town Manager, who may require the grievance to be submitted in writing. The Manager shall give a written reply within one week. The decision of the Manager shall be final unless the grievance involves a policy matter, which must be determined by the Town Council. (amended 09/05/2007)

Section 310. Order of Lay-Offs.

Any employee may be laid off whenever it is necessary because of a shortage of funds, lack of work, or related reasons, which do not reflect discredit upon the employee. Lay-offs shall be on the basis of seniority in each classification within each department, so far as possible.

Temporary/seasonal employees may be laid off at any time by the Department Head without consideration of seniority. (amended 08/17/2011)

Section 311. Resignation.

All employees resigning from Town employment shall give a written two-week notice. Department Heads shall give a written four-week notice.

Section 312. References.

The Town of Scarborough's reference policy is to provide potential future employers only with the town employee's date of hire, date of resignation or termination and terms of employment unless other disclosure is authorized in writing by the employee.

Section 313. Equal Employment Opportunity & Sexual Harassment Policy.

A. Equal Employment Opportunity

Any employee of the Town of Scarborough who believes that he or she has been discriminated against in employment in any way (including harassment or the denial of any employment benefits) on the basis of race, color, religion, national origin, ancestry, age, sex, sexual orientation (including gender identity or expression), physical or mental disability, or any other status protected by law, should follow the complaint procedure outlined below in the Sexual Harassment Policy. The Town of Scarborough takes allegations of discriminatory treatment very seriously. The Town of Scarborough will investigate every allegation of discrimination promptly and take whatever action is necessary to stop unlawful discrimination and remedy any effects of unlawful discrimination. (amended July 20, 2005) (amended 09/05/2007)

B. Sexual Harassment Policy

It is illegal for any employee to sexually harass another employee and for any supervisory employee to permit any act of sexual harassment in the workplace by anyone, whether or not an employee.

C. Definition of Sexual Harassment Under State and Federal Law

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (amended 09/05/2007)

- a. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b. submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- c. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

D. Description of Sexual Harassment

The following type of conduct is considered to be sexual harassment and is not permitted:

A. Physical assaults of a sexual nature such as:

- (1) rape, sexual battery, molestation or attempts to commit these assaults; and
- (2) intentional physical conduct which is sexual in nature such as touching, pinching, patting, grabbing, brushing against another employee's body or poking another employee's body.

B. Unwanted sexual advances, propositions or other sexual comments such as:

- (1) sexually-oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience directed at, or made in the presence of, any employee who indicates, or has indicated, in any way that such conduct in his or her presence is unwelcome;

- (2) preferential treatment, or promise of preferential treatment, to an employee for submitting to sexual conduct including soliciting, or attempting to solicit, any employee to engage in sexual activity for compensation or reward; and
 - (3) subjecting, or threats or subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of that employee's job more difficult because of that employee's sex.
- C. Sexual discriminatory displays or publications anywhere in the town by employees such as:
- (1) displaying pictures, posters, calendars, graffiti, objects, promotional materials, reading materials or other materials that are sexually suggestive, sexually demeaning or pornographic, or bringing into the work environment or possessing any such material to read, display or view at work;
 - (2) reading, or otherwise publicizing, in the work environment materials that are in any way sexually revealing, sexually suggestive, sexually demeaning or pornographic; and
 - (3) displaying signs or other materials purporting to segregate an employee by sex in any area of the workplace (other than restrooms and similar semi-private lockers/changing rooms).

E. Internal Complaint Procedure

Any employee who believes he or she has been the subject of sexual harassment should report the incident or act immediately to his or her supervisor or to one of the following individuals: **HUMAN RESOURCES DIRECTOR or TOWN MANAGER**. The Town will promptly investigate all complaints. Each employee alleging sexual harassment will be requested, but not required, to put his or her complaint in writing. All information will be held in confidence and will be discussed only with those who have a need to know in order to either investigate or resolve the complaint. Any employee whom the Town determines has engaged in sexual harassment will be promptly disciplined. Disciplinary measures may consist of suspension or termination, depending upon the severity of the offense.

No employee will be retaliated against in any way for making a complaint of sexual harassment or for participating in the investigation of any sexual harassment complaint or participating in any related legal proceeding.

Section 314. Whistleblower Policy

Any employee who believes that he or she is aware of a violation of any state or federal law or regulation in the workplace or any condition or practice that would put any person's health or safety at risk is required to immediately report the circumstances to the Human Resources Director or to the Town Manager. The employee will be requested to put the report in writing. The Town will investigate the report promptly and act promptly to take any necessary remedial action. No employee will be penalized for making a report in good faith. (amended 09/05/2007)

Article IV. PUBLIC AND EMPLOYEE RELATIONS

Section 401. Public Relations.

All employees shall maintain a courteous, professional and helpful attitude in dealing with Town residents and other members of the public.

Section 402. Political Activity.

Employees may seek or accept nomination or election to any office in the Town government while employed by the Town, provided that no person may hold elective office while employed by the Town. Therefore, any employee elected to any Scarborough Town Office shall resign from employment prior to taking office, with the exception of on-call emergency personnel elected to the Town Council or Board of Education as per Sections 202 and 402 of the Town Charter. During the course of their employment, employees shall refrain from using their influence publicly in any way for or against any candidate seeking elective office in the Town government. Town employees shall not work at the polls in support of any political purpose pertaining to the Town government, circulate petitions or campaign literature for elective Town officials, or be in any way concerned with soliciting or receiving subscriptions, contributions, or political service from any person for any political purpose pertaining to the Town government. This rule is not to be construed to prevent Town employees from becoming, or continuing to be, members of any political organization, from attending political meetings, from expressing their views on political matters, or from voting with complete freedom in any municipal, state or national election. [amended October 18, 2000; November 1, 2000]

Section 403. Receipt of Gifts.

All Town employees, including Department Heads, are prohibited from soliciting or accepting any gift, gratuity, favor, entertainment, loan, or any other item of monetary value from any person, within or outside Town employment, whose interests may be affected by the employee's performance or nonperformance of his/her official duties. Acceptance of nominal gifts, such as food and refreshments in the ordinary course of business meetings, or unsolicited advertising or promotional materials such as pens, note pads, calendars, etc., is permitted.

Article V. BENEFITS

Section 501. Holidays.

Full-time employees, including those still in the probationary period, shall receive holiday pay for the following holidays:

New Year's Day	Martin Luther King Day
President's Day	Patriot's Day
Memorial Day	Independence Day
Labor Day	Columbus Day
Veteran's Day	Thanksgiving Day
Friday following Thanksgiving	Christmas Day

If a holiday falls on a Saturday, the preceding Friday shall be deemed a holiday and if a holiday falls on a Sunday, the following Monday shall be deemed a holiday.

Because of the nature of the position, certain employees are required to work during a holiday. These employees will receive holiday pay in addition to regular wages for time worked, which in effect, means double pay. Temporary/seasonal and part-time employees are not eligible for paid holidays; if they work on a holiday, such employees will receive their regular wages. (amended 08/17/2011)

Employees on an unpaid leave of absence of any type shall not receive holiday pay. (amended 09/05/2007)

Section 502. Sick Leave and Personal Time.

All full-time employees shall accrue sick leave with pay at the rate of one day per month commencing with the date of initial employment. Temporary, seasonal and part-time employees do not accrue sick leave. Sick leave is defined as leave granted due to personal illness or non-work related bodily injury to the employee or the employee's family member. For purposes of this section, family member is defined to mean spouses, domestic partners (as defined by the Maine Municipal Employee Health Trust), children, parents brothers, sisters, mother-in-law, father-in-law, grandfather, grandmother, grandchildren, step-father, step-mother, step-children or other relative if living in the same household as the employee. [amended 08/20/03] (amended 09/05/2007)(amended 08/17/2011)

A maximum of one hundred twenty (120) days of sick leave may be accrued and carried forward from one calendar year to the next. Upon recommendation of the Department Head, the Human Resources Director may require a doctor's certificate for use of sick leave and/or prior to the return to work by an employee on sick leave for more than one workweek or in circumstances of excessive absenteeism. [amended 08/20/03] (amended 09/05/2007)

An employee shall report all absences to his/her supervisor prior to the start of their regularly scheduled day and in no instance later than one-half hour after the start of the regularly scheduled day. Failure to report within this period shall be considered justification for disallowing sick leave for that day.

Unless otherwise specified by the supervisor, employees shall be expected to call on each day of absence. When the nature of the absence indicates an extended period of time away from work, longer intervals of reporting shall be established by the supervisor.

Each employee will be entitled to sixteen (16) hours of personal time per year. Hours taken as personal time will be deducted from accrued sick leave. [amended 1/02/02]

False or fraudulent use of sick leave shall be cause for disciplinary action.

Section 503. Payment of Unused Sick Leave.

Upon retirement or separation in "good standing" full-time employees who have completed 5 years of service, and who retire, resign after giving the proper notice, or are terminated for reasons not attributable to "cause" shall be compensated for one-third (1/3) of accumulated unused sick leave subject to a maximum payment of forty (40) days, one-half (1/2) after 10 years, subject to a maximum of 60 days, three-quarters (3/4) after 15 years, subject to a maximum of 90 days, and 100% after 20 years to a maximum of 120 days. Payment will be made on the next

regular payday after the employee's last day of work and, if applicable, in accordance with Section 516 Retirement Health Savings Account. In the event of the death of an employee, the designated beneficiary shall receive the above payment for unused sick leave. An employee's estate shall receive 100% of accrued sick leave for a qualified line of duty death. (amended 08/17/2011)

"Good standing" shall mean a written, fourteen (14) day notice to the Town in advance of the employee's last actual day worked, in the case of a proper resignation, valid retirement, or separation of the employee from the Town service for other than cause.

Any absence from duty for which sick leave is paid, or for official leaves of absence, shall not constitute a break in the service record. [amended 2/17/99] (amended 09/05/2007)

Section 504. Bereavement Leave.

Full-time and part-time employees shall be excused from work for up to five (5) calendar days in the event of the death of spouse, domestic partner (as defined by the Maine Municipal Employee Health Trust), child or parents and up to three (3) calendar days off, in the event of the death of another member of the immediate family and shall be paid at the regular rate of pay for scheduled work hours missed. Immediate family is defined to mean brothers, sisters, mother-in-law, father-in-law, grandfather, grandmother, grandchildren, step-father, step-mother, stepchildren or other relative living in the same household as the employee. The Department Head, with the Town Manager's approval, may grant bereavement leave to employees in the event of the death of other members of the family. (amended 11/2/99) (amended 10/06/2004) (amended 02/16/2005) (amended 09/05/2007) (amended 08/17/2011)

Section 505. Leave for Military Reserve Training / Active Duty.

In accordance with state and federal law, all employees will be granted time off from work for annual training obligations or active service in the United States armed services. Employees engaged in active military service will be placed on military leave of absence status. Employees should advise their Department Heads of the dates of their military service as far in advance as possible, unless military necessity prevents such notice. The Town will pay employees the difference between service pay and the employee's regular compensation for a period up to two weeks in any one-year period, provided that the employee on Reserve Service furnishes his/her Department Head an official statement by military authorities giving his/her rank, pay and allowances. Employees should confer with their Department Heads concerning the rights and requirements of re-employment. (amended 09/05/2007)

Section 506. Jury Duty.

The Town shall pay to employees called for jury duty the difference between their regular pay and juror's pay provided the employee provides an official statement of jury pay received and, reports to work after checking in with the immediate supervisor, if released for the day.

Section 507. Vacation.

Vacation privileges are available to all full-time employees at the convenience of the Town of Scarborough. Each full-time employee shall earn vacation with pay on the following basis:

- a. One (1) work day shall be earned for each completed full month of service during the first through fifth year of employment.
- b. One and one-quarter (1 1/4) work days shall be earned for each completed full month of service during the sixth through tenth years of employment.
- c. One and one-half (1 1/2) work days shall be earned for each completed full month of service during the eleventh through the fifteenth years of employment.
- d. One and three-fourths (1 3/4) work days shall be earned for each completed full month of service during the sixteenth through the twentieth years of employment.
- e. After twenty (20) years of service, two (2) work days for each completed full month of service shall be earned.

New employees may be credited with years of service in a similar position for another employer at the discretion of the Town Manager.

Employees shall accrue vacation days during their probationary period but vacation may only be taken after the successful completion of the probationary period unless otherwise approved by the Department Head.

In case a holiday falls within the vacation period, the vacation may be extended to compensate for the holiday.

Any paid leave of absence shall not constitute a break in the service record for purposes of calculating earned vacation, except during the probationary period when such absences shall constitute a break in service. (amended 09/05/2007)

Employees may be entitled to work half the vacation time earned during a calendar year with pay upon approval by the Town Manager. (amended 02/06/02)

Employees with less than fifteen (15) years of service shall be entitled to accumulate twenty (20) days of vacation.

Employees with fifteen (15) years or more of service shall be entitled to accumulate thirty (30) days of vacation.

Accrued vacation leave shall be paid to employees upon their separation from the service or to their beneficiary or estate upon their death and, if applicable, in accordance with Section 516. Retirement Health Savings Account. (amended 08/17/2011)

Section 508. Personal Leave of Absence.

In exceptional circumstances, a full-time employee may be granted a personal leave of absence without pay and without the accrual of sick and vacation time or contribution by the Town towards any employee benefits. Such a leave of absence may be granted only in the discretion of the Town Manager upon recommendation of the Department Head concerned. Such leave of absence without pay shall not exceed one year in length and shall only be granted when it appears, because of the past record of the employee, or because of the purpose for which the leave is requested, that it is to the best interest of the Town to grant the leave. (amended 09/05/2007)

Section 509. Family Leave of Absence Policy. (amended 08/17/2011)

Policy

The Family and Medical Leave Policy is established to integrate the provisions and entitlements of state and federal family and medical leave laws. This policy provides a variety of leave options to help employees balance their work and family responsibilities. Employees who need leave time for their own serious health condition, birth or adoption of a child, care of an immediate family member with a serious health condition, other family responsibilities or military family leave may be granted leave as described below. These policies are complex. For more complete information or questions about specific situations, contact the Human Resources office.

Eligibility

Employees must have at least 12 months of service (not necessarily consecutive) with the Town and have worked at least 1,250 hours during the 12 month period immediately preceding the request for leave. For seasonal and/or temporary positions, the 12 month service requirement will include only those months worked during the season.

Basic Family Leave Entitlements

1. This policy provides eligible Town employees up to 12 workweeks of unpaid Family Medical Leave (FML) each year:
 - For the birth of child and care of a newborn child of the employee;
 - For the placement with the employee of a son or daughter for adoption or foster care;
 - To care for the employee's spouse, son or daughter or parent with a serious health condition;
 - To take medical leave for a serious health condition expected to last beyond one work week (including a worker's compensation injury) that prevents the employee from performing the functions of his or her job.
2. If not eligible for FML as described above, an employee may qualify for leave under the Maine Family Medical Leave Law. Under this law, an employee who has worked for the Town for 12 consecutive months is eligible for up to 10 work weeks of unpaid Family Medical Leave during any two year period for the employee's serious health condition, the birth or adoption of a child, including a domestic partner's child, the serious health condition of a child, domestic partner's child, parent, domestic partner or spouse, or sibling, or the death of the employee's spouse, domestic partner, parent, sibling or child who is a covered service member who dies while on active duty.

Military Family Leave Entitlements

1. Eligible employees are entitled to up to 12 workweeks of unpaid active duty leave during a 12-month period because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent of the eligible employee is on active duty or has been called to active duty status as a member of the National Guard or Reserves in support of a contingency operation. Examples of qualifying exigencies include making arrangements for child care, making financial and legal arrangements to address the

service member's absence, or attending to farewell or arrival arrangements for a service member.

2. Eligible employees are entitled to up to 26 workweeks of unpaid military caregiver leave during a single 12-month period to care for a covered military service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin. This 12-month period occurs using the 12-month period measured forward from the date an employee's first FMLA leave to care for the covered service member begins.
3. Under Maine law, when an employee's spouse, domestic partner, or child who is a Maine resident is deployed for military leave in a combat theater or an area where armed conflict is taking place for 180 days or longer, the eligible employee may take up to 15 days of leave.

Definitions

1. "Spouse" means a husband or wife as defined or recognized under Maine law.
2. "Domestic Partner" means the partner of an employee who:
 - A. Is a mentally competent adult as is the employee;
 - B. Has been legally domiciled with the employee for at least 12 months;
 - C. Is not legally married to or legally separated from another individual;
 - D. Is the sole partner of the employee and expects to remain so;
 - E. Is not a sibling of the employee; and
 - F. Is jointly responsible with the employee for each other's common welfare as evidenced by joint living arrangements, joint financial arrangements or joint ownership of real or personal property.
3. "Sibling" means a sibling of an employee who is jointly responsible with the employee for each other's common welfare as evidenced by joint living and financial arrangements.
4. "Serious Health Condition" means an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.
5. "Health care provider" is defined as: a doctor of medicine or osteopathy, chiropractor, podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, nurse mid-wife, or a clinical social worker who is authorized to practice, and performing within the scope of their practice as defined by state law, or a Christian Science practitioner. A health care provider also is any provider that the Town or the employee's group health plan will accept medical certification to substantiate a claim for benefits.

Certification Requirements

1. Initial Certification. The Town will require that an employee's request for leave under this policy be supported by certification by a health care provider, or in the case of a qualifying exigency, by the appropriate military documents. Certification will be provided using the appropriate Department of Labor form. The employee must respond to the Town's request for certification within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

The Town may require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition. The Town may use a health care provider, a human resource professional, a leave administrator or management official, excluding the employee's direct supervisor, to authenticate or clarify a medical certification of a serious health condition.

2. **Recertification.** The Town may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless one of the following occur: circumstances described by the previous certification have changed significantly, the Town receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. The Town may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.
3. **Medical Release to Return to Work.** An employee who has been on leave beyond one workweek due to his or her own medical condition is required to provide medical documentation of the employee's ability to return to work including any medical restrictions that may be applicable. This certification must be received by the supervisor or Human Resources Director prior to the employee returning to work.

Procedure for Requesting FML Leave

All employees requesting FML leave must provide verbal or written notice of the need for the leave to the Human Resources Director. Within five business days after the employee has provided this notice, the Human Resources Director will complete and provide the employee with the DOL *Notice of Eligibility and Rights*.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FML leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FML leave is not foreseeable, the employee must comply with the Town's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

Designation of FMLA Leave

Within five business days after the employee has submitted the appropriate certification form, the Human Resources Director will complete and provide the employee with a written response to the employee's request for FML leave using the DOL *Designation Notice*.

Intent to Return to Work from FMLA Leave

On a basis that does not discriminate against employees on FML leave; the Town may require an employee on FML leave to report periodically on the employee's status and intent to return to work.

General Provisions

1. Leave taken under this policy may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

2. Leave under this policy (with the exception of military caregiver leave which uses the 12-month period measured forward) is computed on a "rolling" 12-month period measured backward.
3. The Town places an eligible employee on FML leave when the absence from work is expected to be one workweek or longer. Paid annual leave, sick leave, compensatory time, and leave without pay may be used during the period of FML leave as explained below and in accordance with applicable Town policies.
4. Leave on an intermittent basis or on a reduced work schedule may be requested when medically necessary for a serious health condition.
5. If both husband and wife work for the Town and each wishes to take leave for the birth and care of their newborn child, adoption or placement of a child in foster care, or to care for a parent (not parent "in law") with a serious health condition, the husband and wife may only take a combined total of 12, or in the case of military caregiver, 26 weeks of leave. Leave for the birth and care of a child, or placement for adoption or foster care, must conclude within 12 months of the birth or placement.
6. Extensions of paid or unpaid leave beyond FML entitlements may be approved under some leave policies.

Benefit Coverage during Leaves

While an employee is on any paid leave (including sick leave, annual leave, and compensatory time), benefit coverage continues with no additional cost to the employee. During an unpaid leave of absence that qualifies as FML leave, health insurance coverage (including dental and/or optical coverage) continues on the same terms as during active employment, with the Town and the employee each paying the customary share of premiums. If the employee is not eligible for FML leave or the employee continues to need unpaid leave after exhausting FML leave, the employee is responsible for both the Town's and employee cost of continued benefit coverage. If applicable, the employee is responsible for making arrangement for the payment of the employee portion of any premiums that are not fully covered by a Town contribution. Failure to pay the employee portion of the premiums within 30 days of the due date may result in cancellation of enrollment in that plan.

If you do not return to work at the conclusion of your approved family and medical leave, you may be liable for payment of the health plan premiums (medical, dental, optical) paid by the Town during any unpaid portion of your leave. The Town may recover its share of health plan premiums by taking deductions, to the extent permitted by law, from your unpaid wages, if any, vacation pay, or other pay due you. However, you will not be liable for the premiums if your failure to return to work is due to continuation of your own serious health condition or other reasons beyond your control. You will be considered to have returned to work if you work for at least 30 calendar days commencing with your scheduled return date.

The Town's responsibility to continue an employee's health plan coverage ends (except for COBRA continuation coverage) upon notice that the employee does not intend to return to work at the end of the approved leave.

Employees on unpaid FML may choose to continue other voluntary deductions, including life insurance, at the employee's expense. Arrangements for premium payments must be made by the employee with the appropriate vendors.

Job Restoration

Upon return from FML leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment provided that the employee returns to work immediately following the conclusion of family and medical leave. An employee has no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

Section 510. Leave for Victims of Domestic Violence.

In accordance with Maine Law, the Town will grant employees a reasonable and necessary amount of time off from work without pay if an employee is a victim of domestic violence, domestic assault, sexual assault or stalking, and needs the time to:

- Prepare for or attend court proceedings,
- Receive medical treatment, or
- Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.

Employees must request the leave from the Human Resources Director as soon as circumstances make it clear that time off is necessary. Approval of leave will be dependent upon (a) whether the employee's absence will create an undue hardship for the Town, (b) whether the employee requested leave within a reasonable time, and (c) whether the requested leave is impractical, unreasonable or unnecessary given the facts made available to the Human Resources Director at the time of the request.

If an employee's leave is approved, the employee will be required to first use any accrued paid vacation, sick or compensatory time before taking unpaid leave. Employees will not be discriminated against for taking or asking for leave. (amended 09/05/2007)

Section 511. Medical Insurance.

Currently, the Town offers group medical insurance to full-time employees in accordance with plan provisions. Full-time employees, regardless of probationary status, are eligible on the first day of the month following employment date or at open enrollment. The Town reserves the right to change insurance carriers and/or benefit level as deemed necessary. (amended 08/17/2011)

Currently, the Town contributes 100 % of the health insurance premiums for all full-time employees. The Town will pay a percentage of the premium and the full-time employee will pay for percentage of the premium of the cost of covering additional eligible dependents.

Employees who are currently covered or can be covered under other medical coverage can opt to receive an annual buy-out payment of \$1,500 (divided over 52-weeks). Proof of valid medical coverage must be presented in order to be eligible for this option.

If other health and/or dental coverage ends for any of the following reasons, the employee (and his/her eligible dependents) may still enter the Health and/or Dental programs offered through the Health Trust.

- (1) Loss of the other insurance coverage due to termination of employment, or a reduction in the number of hours worked.
- (2) Loss of other coverage because such other coverage is no longer available.
- (3) A change in contribution required by the other plan.
- (4) Divorce or legal separation.
- (5) Death of the spouse.
- (6) Loss of Medicaid benefits.

Employees who are covered by the town's medical insurance at the time of employment termination, who are at least 55 years of age, and who are eligible for retirement benefits under either of the town's retirement programs (i.e. Maine State Retirement or ICMA-RC 401(a)), may continue their coverage (including dependent coverage if in place at time of termination) under the town's medical plan. An employee continuing coverage will do so at his/her expense; there will be no employer contribution.

The Town currently provides a Flexible Spending Account Plan for medical and dependent care expenses. [amended 2/17/99] [amended 10/06/2004] [amended 02/16/2005] (amended 09/05/2007)

Section 512. Dental Insurance.

Currently, dental insurance is available to full-time employees, regardless of probationary status, on the first day of the month following employment. The Town currently pays 50% of the premium for individual coverage for employees, who must pay the remaining premium as well as the premium for any plan providing dependent coverage. All employee contributions shall be by payroll deduction upon the written authorization of the employee. With the exception of COBRA continuation, employees may not carry dental coverage into retirement. [amended 10/06/2004] [amended 02/16/2005] (amended 09/05/2007)

Section 513. Long Term Disability Benefits

Full-time employees become eligible for long term disability benefits after six months of continuous active work during employment. Long term disability benefits pay a regular income when an eligible employee is totally disabled and cannot work. Coverage for long term disability benefits begins when an eligible employee begins after 90 days of disability due to the same or a related sickness or injury. Upon eligibility for, or approval of, long term disability benefits, an employee may be asked to resign his or her employment with the Town if there is no medical indication that the employee will be able to return to work with the Town within a reasonable period of time. Coverage for each employee shall be equal to 60% of an employee's base pay up to a maximum monthly benefit of \$5,000 and is based on the District's policy in effect at the time of coverage. Benefits are available as long as total disability continues, until age 65. Benefits received may be offset by Social Security and/or Maine Public Employees Retirement System.

The Town reserves the right to change disability insurance carriers and/or benefit level as deemed necessary. (adopted 08/17/2011)

Section 514. Income Protection Plan.

Full-time employees may participate in the Maine Municipal Association income protection plan upon application therefore and payment of the cost therefore. Eligible employees may purchase income protection at 40%, 55%, or 70% replacement of salary. The cost of this program is dependent upon level of salary. (amended 10/06/2004) (amended 09/05/2007)

Section 515. Retirement.

Employees participate in, and are eligible to receive benefits from the following retirement plans:

A. Voluntary.

Employees may participate in either the Maine Public Employees Retirement System (MPERS) or the ICMA plan, but not both:

Maine State Retirement System.

The Town of Scarborough became a participating district in the Maine Public Employees Retirement System (MPERS) May 1, 1971. Part-time or temporary employees who work at least 720 hours in a calendar year and all full-time employees may become a member of the MSRS. Employer and employee contributions are made to the MPERS plan in accordance with the requirements of the plan and state law. (amended 08/17/2011)

Information concerning retirement benefits may be obtained from the Maine Public Employees Retirement System in or from the Human Resources Department. (amended 08/17/2011)

International City Management Association - Retirement Corporation (ICMARC).

The Town of Scarborough entered into an agreement with ICMARC for the Money Purchase Plan on 1/1/85. All full-time employees are eligible to participate. Employer and employee contributions are made in conformity with plan requirements. The employee's contribution of 6% is in the form of a deduction from each paycheck. The Town in turn contributes matching funds. Contributions are deferred from federal and state income taxes until withdrawn. Funds may not be withdrawn until termination of employment. (amended 2/17/99) (amended 08/17/2011)

Information concerning retirement benefits may be obtained from the ICMA - RC or from the Human Resources Department. (amended 08/17/2011)

Employees contributing to the ICMARC or the MPERS may also contribute to the ICMARC - Deferred Compensation Plan 457 (through payroll deduction up to the annual maximum contribution allowed as approved by the Internal Revenue Service effective January 1st of each year. This contribution is also deferred from

federal and state income taxes until withdrawn. Funds may not be withdrawn until termination of employment. Beginning in the year July 1, 1999, the Town will contribute up to an additional 4% to the employees I.C.M.A. 457 Plan, whatever the employee chooses to match up to the 4% maximum as elected by the employee. Each employee must designate the level of their participation in the I.C.M.A. 457 match no later than February 24, 1999 in the current year and no later than February 15 in subsequent years. (amended 2/17/99) (amended 08/17/2011)

Information concerning retirement benefits may be obtained from the ICMA - RC or from the Finance Department.

Social Security.

All municipal employees receive full social security coverage, which includes both the old age, survivors and disability insurance (OASI) program and the hospital insurance (HI) program known as Medicare. Social security contributions are made by both the employee and the Town in compliance with federal law.

Section 516. Retirement Health Savings

Eligible employees may participate in the Town's Retirement Health Savings Account (RHSA) under the following provisions:

1. Probationary employees shall be excluded from participating in the RHSA plan until they have successfully completed their probationary period of six (6) months.
2. Active employees:
 - a. Vacation hours in excess of calendar year end accruals shall be deposited into RHSA. Participants with less than fifteen (15) years of service shall have all vacation hours in excess of 160 accrued hours at the end of the calendar year deposited into RHSA. Participants with fifteen (15) or more years of service shall have all vacation hours in excess of 240 accrued hours and the end of the calendar year deposited into RHSA.
 - b. Holiday hours accrued in excess of ninety-six (96) hours at the end of the calendar year deposited into RHSA.
 - c. Sick hours accrued in excess of seven-hundred and twenty (720) hours at the end of the calendar year shall have twenty-four (24) sick hours deposited into RHSA.

3. Hours Upon Separation

Sick Leave

- Participants with more than 14 weeks (over 560 hours) of accrued sick hours shall have 50% of the sick hours deposited into RHSA at termination.

- Participants with more than 4 weeks (over 160 hours) of accrued sick hours shall have 25% of the sick hours deposited into RHTSA at termination.
 - Participants with 4 weeks (160 hours) or less of accrued sick hours shall have 0% of the sick hours deposited into RHTSA at termination.
 - Vacation Leave
 - Participants with more than 2 weeks (80 hours) shall have 50% of the vacation hours deposited into RHTSA at termination.
- *Hours will be prorated according to hours worked.

Section 517. Optional Benefits.

Full-time employees may elect to purchase, through payroll deductions, additional insurance benefits made available by the Town. Information on optional benefit programs is available at the from the Human Resource Department. (amended 08/17/2011)

Section 518. Cessation of Town’s Contribution to Employee Benefits.

After 90 days of unpaid leave for any reason, the Town shall cease making employer contributions to any employee benefit plan. Group health and dental insurance may remain in effect if the employee arranges for payment of the premium. At that time, the employee will receive a so-called “COBRA” notice giving the details of how the employee may apply for continuation of health insurance coverage at his or her expense. In the event the employee does not receive the COBRA notice, the employee should contact the Human Resources Director to request the notice. (amended 09/05/2007)

Article VI. SEVERABILITY AND EFFECTIVE DATE

Section 601. Severability.

The provisions of this Ordinance are severable and the invalidity of any provision of this Ordinance shall not invalidate any other part hereof.