

**Marlborough Hospital
Massachusetts Paid Family and
Medical Leave Plan**

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For Covered Individuals of the Marlborough Hospital Massachusetts Paid Family and Medical Leave Plan

This document constitutes Marlborough Hospital's Private Plan (the "Plan") under the Massachusetts Paid Family and Medical Leave Law, M.G.L. c. 175M. This Plan is effective January 1, 2021 ("Plan Effective Date"). Should there be a discrepancy between this document and the Massachusetts statute and supporting regulations, this Plan will be administered based on the statute and regulations, except where this plan offers more generous terms or conditions than available under Massachusetts statutes and regulations.

Please note that any definitions or other terms used in this Plan from or citations to the applicable law(s) of the Commonwealth of Massachusetts are provided as of the Plan Effective Date for ease of reference but this Plan is intended to be governed by and subject to the applicable law of Massachusetts at all times, including any revisions to or interpretations or guidance of such law that may be provided or made from time to time after the Plan Effective Date and that any individuals covered under this Plan shall be subject to all such laws regardless of any wording to the contrary in this Plan, except where this plan offers more generous terms or conditions than available under Massachusetts statutes and regulations.

I. Definitions

"Adoption" means legally and permanently assuming the responsibility of raising a Child as one's own. The source of an adopted Child (i.e., whether from a licensed placement agency or otherwise) is not a factor in determining eligibility for leave.

"Average Weekly Wage" shall have the same meaning as provided in M.G.L. c. 151A, § 1(w); provided, however, that Average Weekly Wage shall be calculated using earnings from the Base Period.

"Base Period" means the last four completed calendar quarters immediately preceding the starting date of a qualified period of paid family or medical leave.

"Benefit Year" means the period of 52 consecutive weeks beginning on the Sunday immediately preceding the first day of job-protected leave for the covered individual.

"Calendar Year" means a 12-month period starting with January 1st and ending with December 31st.

"Child" means a biological, adopted or foster child, a stepchild or legal ward, a child to whom the Covered Individual stands in loco parentis, or a person to whom the Covered Individual stood in loco parentis when the person was a minor child.

"Continuing Treatment by a Health Care Provider" includes any one or more of the following:

(a) Incapacity and treatment. A period of Incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of Incapacity relating to the same condition, that also involves:

1. Treatment two or more times, within 30 calendar days of the first day of incapacity, unless extenuating circumstances exist, by a Health Care Provider, by a nurse under

- direct supervision of a Health Care Provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a Health Care Provider; or
2. Treatment by a Health Care Provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the Health Care Provider. Treatment includes examination to determine if there is a Serious Health Condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes a course of prescription medication or therapy requiring specialized equipment to resolve or alleviate the health condition.
 3. The requirement for treatment by a Health Care Provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven calendar days of the first day of incapacity.
 4. Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.
 5. The term extenuating circumstances means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a Health Care Provider determines that a second in-person visit is needed within the 30-day period, but the Health Care Provider does not have any available appointments during that time period.
- (b) Pregnancy or Prenatal Care. Any period of incapacity due to pregnancy, or for prenatal care.
- (c) Chronic Conditions. Any period of Incapacity or treatment for such Incapacity due to a chronic serious health condition. A chronic Serious Health Condition is one which:
1. Requires periodic visits (defined as at least twice a year) for treatment by a Health Care Provider, or by a nurse under direct supervision of a Health Care Provider;
 2. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 3. May cause episodic rather than a continuing period of Incapacity (e.g., asthma, diabetes, epilepsy, etc.).
- (d) Permanent or Long-term Conditions. A period of Incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee, Covered Individual or Family Member must be under the continuing supervision of, but need not be receiving active treatment by, a Health Care Provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
- (e) Conditions Requiring Multiple Treatments. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a Health Care Provider or by a provider of health care services under orders of, or on referral by, a Health Care Provider, for:
1. Restorative surgery after an accident or other injury; or
 2. A condition that would likely result in a period of Incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

- (f) Absences attributable to Incapacity under Continuing Treatment by a Health Care Provider (b) or (c) qualify for leave even though the employee, Covered Individual or the covered Family Member does not receive treatment from a Health Care Provider during the absence, and even if the absence does not last more than three consecutive, full calendar days.
- (g) Cosmetic treatments are not serious health conditions unless inpatient hospital care is required or unless complications develop.

“Contributions” means the payments made by Covered Individuals and Marlborough Hospital to the Plan.

“Covered Individual” under this Plan means a:

- (a) full-time, part-time, permanent, per diem or temporary employee of Marlborough Hospital;
- (b) former employee. A former employee will remain a Covered Individual for 26 weeks after separation or until employed, whichever comes first.

Covered Individuals perform services localized in Massachusetts for Marlborough Hospital, or if services are not localized in Massachusetts, their services meet the requirements of 458 CMR 2.00 (e.g. former employees who met the requirements of 458 CMR 2.00 on the date employment ended).

Additionally, Covered Individuals must meet the Financial Eligibility Test. Former employees shall have met the Financial Eligibility Test at the time of separation from employment.

“Covered Servicemember” means either:

- (a) a member of the Armed Forces, as defined in M.G.L. c. 4, § 7, including a member of the National Guard or Reserves, who is:
 - 1. undergoing medical treatment, recuperation or therapy;
 - 2. otherwise in outpatient status; or
 - 3. is otherwise on the temporary disability retired list for a serious injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces, or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces; or
- (b) a former member of the Armed Forces, including a former member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy for a serious injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces, or a serious injury or illness that existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces and manifested before or after the member was discharged or released from service.

“Department” means the Department of Family and Medical Leave.

“Domestic Partner” means a person not less than 18 years of age who:

- (a) is dependent upon the Covered Individual for support as shown by either unilateral dependence or mutual interdependence that is evidenced by a nexus of factors including, but not limited to:
1. common ownership of real or personal property;
 2. common householding;
 3. children in common;
 4. signs of intent to marry;
 5. shared budgeting; and
 6. the length of the personal relationship with the covered individual; or
- (b) has registered as the domestic partner of the Covered Individual with any registry of domestic partnerships maintained by the Marlborough Hospital of either party, or in any state, county, city, town or village in the United States.

“Employer” means Marlborough Hospital and its subsidiaries, if any.

“Employment Benefits” means all benefits provided or made available to employees by Marlborough Hospital, including, but not limited to, group life insurance, health insurance, disability insurance, sick leave, annual or vacation leave, educational benefits and pensions.

“Family Leave” means leave taken to care for a Family Member with a Serious Health Condition, for a Parent to bond with the Parent’s Child during the first 12 months after the child’s birth, Adoption, or Foster Care placement, to care for a Family Member who is a Covered Servicemember, or because of a Qualifying Exigency arising out of the fact that a Family Member is on active duty or has been notified of an impending call or order to active duty in the Armed Forces.

“Family Member” means the spouse, Domestic Partner, Child, Parent or Parent of a spouse or Domestic Partner of the Covered Individual; a person who stood in loco parentis to the Covered Individual when the Covered Individual was a minor Child; or a grandchild, Grandparent or Sibling of the Covered Individual.

“Financial Eligibility Test” means a demonstration that, over the 12 months preceding an individual’s claim for benefits, the individual has received total Wages as an employee or payments for service as a Covered Contract Worker from Marlborough Hospital or another Massachusetts Covered Business Entity that in the aggregate equal or exceed 30 times the individual’s weekly benefit amount as determined by the Department under 458 CMR 2.12, and that in the aggregate are not less than the dollar amount calculated annually by the Department of Unemployment Assistance.

“Foster Care” means 24-hour care for children in substitution for and away from their Parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the Parent and guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for Foster Care and involves agreement between the State and foster family that the foster family will care for the child. Although Foster Care may be with relatives of the child, State action is involved in the removal of the child from parental custody.

“Grandparent” means a Parent of the covered individual’s Parents.

“Health Care Provider” means an individual licensed by the State in which the individual practices medicine, surgery, dentistry, chiropractic, podiatry, midwifery or osteopathy, and including the following:

- (a) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in by a State and performing within the scope of their practice as defined under that State’s law;
- (b) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;
- (c) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.
- (d) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of the person’s practice as defined under such law.

“Incapacity” means an inability to perform the functions of one’s position, or where the Covered Individual is a former employee, to perform the functions of one’s most recent position or other Suitable Employment due to the serious health condition, treatment therefor, or recovery therefrom.

“Inpatient Care” means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity, or any subsequent treatment in connection with such inpatient care.

“Intermittent Leave” means leave taken in separate periods of time due to a single Qualifying Reason, rather than for one continuous period of time. Examples of Intermittent Leave include leave taken on an occasional basis for medical appointments or leave taken several days at a time spread over a period of months.

“Medical Leave” means leave taken by a Covered Individual due to a Serious Health Condition.

“Parent” means the biological, adoptive, step- or foster mother or father of the covered individual.

“Qualifying Earnings” mean (a) wages paid to an employee, (b) payments by covered business entities to covered contract workers, and (c) earnings from self-employment on which a self-employed individual is making contributions to the Department pursuant to 458 CMR 2.06.

“Qualifying Exigency” means a need arising out of a Covered Individual’s Family Member’s active duty service or notice of an impending call or order to active duty in the Armed Forces, including, but not limited to, providing for the care or other needs of the military member’s child or other Family Member, making financial or legal arrangements for the military member, attending counseling, attending military events or ceremonies, spending time with the military member during a rest and recuperation leave or following return from deployment or making arrangements following the death of the military member.

“Qualifying Reason” means any of the following reasons for which a Covered Individual is eligible for Family or Medical Leave benefits: to bond with a child during the first 12 months after the child’s birth, Adoption, or Foster Care placement; to care for a Family Member’s Serious Health Condition; to care for a family member who is a Covered Servicemember; a Qualifying Exigency arising out of a family member’s active duty or impending call to active duty in the Armed Forces;

or the covered individual's own Serious Health Condition that incapacitates the individual from performing the essential functions of the individual's job.

"Reduced Leave Schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of a covered individual.

"Serious Health Condition" means an illness, injury, impairment or physical or mental condition that involves:

- (a) Inpatient Care in a hospital, hospice or residential medical facility; or
- (b) Continuing Treatment by a Health Care Provider.

"Sibling" means the biological, adoptive, step- brother or sister of a covered individual.

"Social Security Wage Base" means the base limit established annually by the federal Social Security Administration for purposes of the Federal Old-Age, Survivors, and Disability Insurance program limits pursuant to 42 U.S.C. 430.

"State" means the Commonwealth of Massachusetts.

"State Average Weekly Wage" means the Average Weekly Wage in the Commonwealth as calculated and determined by the Director of the Massachusetts Department of Unemployment Assistance.

"Suitable Employment" takes into consideration whether the employment is detrimental to the health, safety or morals of an employee, is one for which he is reasonably fitted by training and experience, including employment not subject to this chapter, is one which is located within reasonable distance of his residence or place of last employment, is one which reasonably accommodates the individual's need to address the physical, psychological and legal effects of domestic violence, and is one which does not involve travel expenses substantially greater than that required in his former work.

No work shall be deemed suitable, and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

- (a) If the position offered is vacant due directly to a strike, lockout or other labor dispute;
- (b) If the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
- (c) If acceptance of such work would require the individual to join a company union or would abridge or limit his right to join or retain membership in any bona fide labor organization or association of workmen.

An individual who is certified as attending an industrial retraining course or other vocational training course as provided under M.G.L. c. 151A § 30 (c) shall not be denied benefits by reason of the application of the first paragraph of this subsection relating to failure to apply for, or refusal to accept, suitable work.

"Wages" means every form of remuneration of an employee subject to MG.L. c. 151A for employment by an employer, whether paid directly or indirectly, including salaries, commissions and bonuses, and reasonable cash value of board, rent, housing, lodging, payment in kind and all remuneration paid in any medium other than cash; provided, however, that such term shall not include:

- (a) The amount of any payment, including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment, made to, or on behalf of, an employee or any of the employee's dependents under a plan or system established by an employer which makes provision for the employees generally and their dependents or for a class or classes of the employees and their dependents, on account of (i) sickness or accident disability but, in the case of payment made to an employee or any of the employee's dependents, this paragraph shall exclude from the term "wages" only payments which are received under a worker's compensation law; or (ii) medical or hospitalization expenses in connection with sickness or accident disability; or (iii) death.
- (b) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer.
- (c) Any payment made to, or on behalf of, an employee or the employee's beneficiary (i) from or to a trust described in section 401 (a) of Federal Internal Revenue Code and exempt from tax under section 501 (a) of the Code at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust; or (ii) under or to an annuity plan which, at the time of such payment, is a plan described in section 403 (a) of the Federal Internal Revenue Code; or, (iii) under a simplified employee pension plan if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219 (b) (2) of the Federal Internal Revenue Code for such payment; or (iv) under or to an annuity contract described in section 403 (b) of the Federal Internal Revenue Code other than payment for the purchase of such contract which is made by reason of a salary reduction agreement whether evidenced by a written instrument or otherwise; or (v) under or to an exempt governmental deferred compensation plan as defined in section 3121 (v) (3) of the Federal Internal Revenue Code; or (vi) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living as determined by the United States Secretary of Labor since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3 (2) (B) (ii) of the Employee Retirement Income Security Act of 1974.
- (d) The payment by an employer without deduction from the remuneration of the employee of the tax imposed upon an employee under section 3101 of the Federal Internal Revenue Code, or any acts in addition thereto and amendments thereof.
- (e) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business.
- (f) Tips paid in any medium other than cash. Cash tips received by an employee in any calendar month in the course of the employee's employment by an employer unless the amount of such cash tips is twenty dollars or more and then only in the amount reported by the employee to the employer pursuant to section 6053 (a) of the Federal Internal Revenue Code.
- (g) remuneration paid to or on behalf of an employee if at the time of the payment of such remuneration, and to the extent that, it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Federal Internal Revenue Code, determined without regard to section 274(n) of said code.
- (h) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129 of the Federal Internal Revenue Code.

The term "wages" shall include: (i) any employer contribution under a qualified cash or deferred arrangement as defined in section 401K of the Federal Internal Revenue Code, to the extent not included in gross income by reason of section 402 (1) (8) of the Code; (ii) any amount treated as an employer contribution under section 414 (h) (2) of the Code; and (iii) any employer contribution under a nonqualified deferred compensation plan. For the purposes of clause (iii) the term nonqualified deferred compensation plan shall mean any plan or other arrangement for deferral of compensation other than a plan described in subparagraph (c) above. Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this paragraph as of the date that the services are performed or the date that there is no substantial risk of forfeiture of the rights to such amount, whichever date is later.

Any amount taken into account as wages by reason of clause (iii) in the paragraph above and the income attributable thereto shall not thereafter be treated as wages for purposes of this subsection.

"Weekly Benefit Amount" means the amount of wage replacement paid to a Covered Individual on a weekly basis while the Covered Individual is on family or Medical Leave.

"You" means a person who is eligible for benefits under this Plan.

II. Eligibility

(a) You are a Covered Individual under this Plan if You are a:

1. full-time, part-time, permanent, per diem, or temporary employee of Marlborough Hospital;
2. former employee. A former employee will remain a Covered Individual for 26 weeks after separation or until employed, whichever comes first.

Covered Individuals perform services localized in Massachusetts for Marlborough Hospital, or if services are not localized in Massachusetts, their services meet the requirements of 458 CMR 2.00 (e.g. former employees who met the requirements of 458 CMR 2.00 on the date employment ended).

Additionally, Covered Individuals must meet the Financial Eligibility Test. Covered Individuals who are former employees met the Financial Eligibility Test at the time of separation from employment.

(b) Benefits Available:

Benefits are available to Covered Individuals under this Plan beginning January 1, 2021 or date of hire, if later.

III. Covered Individual Contributions

Contributions are required under this plan from all Covered Individuals, other than former employees.

The Contributions for the Family Leave component of the plan will be 0.13% of the Covered Individual's gross Wages capped at the Social Security Wage Base.

The Contributions for the Medical Leave component of the plan will be 40% of 0.62% of the Covered Individual's gross Wages capped at the Social Security Wage Base.

The Contribution amount may be adjusted each Calendar Year but will never be more than the cost Covered Individuals would be charged under the State plan administered by the Department. Should the amount of Contributions change, Covered Individuals will be notified in advance of that date.

IV. Notice Obligations

- (a) **Covered Individuals Notice Obligations.** A Covered Individual must provide at least 30 days' notice to Marlborough Hospital of the anticipated starting date of leave, the anticipated length of leave, the type of leave, and the expected date of return. If the delay is for reasons beyond the Covered Individual's control, notice is to be provided as soon as practicable.
- (b) **Marlborough Hospital Notice Obligations.** Marlborough Hospital will comply with all applicable notice obligations imposed by Massachusetts law.

V. Interaction with State and Federal Leave Laws

Leave under this Plan runs concurrently with leave taken under other applicable State and federal leave laws, including the Commonwealth's Parental Leave Act (M.G.L. c. 149, § 105D), and the federal Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.), as amended, when the leave is for a qualified reason under those acts.

VI. Benefit Waiting Period

No family or Medical Leave benefits are payable during the first 7 consecutive calendar days of an approved initial claim for benefits.

Where the approved claim involves leave on an intermittent or Reduced Leave Schedule, the benefit waiting period will be 7 consecutive calendar days, not the aggregate accumulation of 7 days of leave.

Bonding immediately following Medical Leave during pregnancy or recovery from childbirth will not require an additional 7-day benefit waiting period.

VII. Duration of Leave

- (a) For all leave durations noted below, the 7-day benefit waiting period will count against the total available period of leave in a Benefit Year.
- (b) Beginning January 1, 2021, You may be eligible for up to:
 - 1. Twenty-six (26) total weeks, in the aggregate, of paid family and Medical Leave in a Benefit Year.
 - 2. Twelve (12) weeks of paid Family Leave in a Benefit Year:
 - (i) for the birth, Adoption, or Foster Care placement of a child, or
 - (ii) due to a Qualifying Exigency arising out of the fact that a family member is on active duty or has been notified of an impending call to active duty in the Armed Forces.
 - 3. Twenty-six (26) weeks of paid Family Leave in a Benefit Year in order to care for a family member who is a Covered Servicemember.
 - 4. Twenty (20) weeks of paid Medical Leave in a Benefit Year if they have a Serious Health Condition that incapacitates them from work.
- (c) Beginning July 1, 2021, You are eligible for up to 12 weeks of paid Family Leave to care for a family member with a serious health condition.
- (d) Additionally:
 - 1. Leave allotments are based on the number of hours or days a Covered Individual works.
 - 2. When You work a part-time schedule or variable hours, the amount of leave that You use is determined on a pro rata or proportional basis.

3. If your schedule varies from week to week to such an extent that Marlborough Hospital is unable to determine with certainty how many hours You would otherwise have worked (but for taking leave as authorized under this Plan), a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period will be used for calculating the leave entitlement.

VIII. Intermittent Leave and Reduced Leave Schedules

You may take family or Medical Leave on an intermittent or Reduced Leave Schedule, as follows:

- (a) For Family Leave to bond with a Child during the first 12 months after the Child's birth, Adoption, or Foster Care placement, leave may be taken on an intermittent or Reduced Leave Schedule only if Marlborough Hospital and You mutually agree.
- (b) For Family Leave to care for a family member's serious health condition, or to care for a family member who is a covered service member, leave may be taken on an intermittent or Reduced Leave Schedule if the Health Care Provider determines it is medically necessary.
- (c) For Family Leave due to a Qualifying Exigency arising out of a family member's active duty or impending call to active duty in the Armed Forces, leave may be taken on an intermittent or Reduced Leave Schedule.
- (d) For Medical Leave due to your own serious health condition, Intermittent Leave may be taken if medically necessary. You need to advise Marlborough Hospital, when requested, of the reasons why the intermittent/Reduced Leave Schedule is necessary and of the schedule for treatment, if applicable. You and Marlborough Hospital will attempt to work out a schedule for such leave that meets your individual needs without unduly disrupting Marlborough Hospital's operations, subject to the approval of the Health Care Provider.
- (e) If You are a former employee You may take leave intermittently or on a Reduced Leave Schedule.

The designated minimum time period for Intermittent Leave is 1 hour.

Leave taken on an intermittent or reduced leave schedule will result in a proportionate reduction in the covered individual's available allotment of leave. Additionally, the weekly benefit amount will be reduced in direct proportion to the intermittent or reduced leave schedule.

IX. Calculation of Benefits

- (a) The Weekly Benefit Amount is the sum of:
 1. 80% of the portion of your Average Weekly Wage that is equal to or less than 50% of the State Average Weekly Wage

PLUS

 2. 50% of the portion of your Average Weekly Wage that is greater than 50% of the State Average Weekly Wage.
- (b) Maximum Weekly Benefit Amount

The maximum Weekly Benefit Amount is 64% of the State Average Weekly Wage and may be adjusted on each January 1st by the Department. As of this Plan's Effective Date, it is \$850.00. per week.

(c) Deductible Sources of Income

The weekly benefit amount will be reduced by the amount of Wages or wage replacement that You receive from:

1. any government program or law, including unemployment benefits under M.G.L. c.151A, or workers' compensation under M.G.L. c. 152, other than for permanent partial disability incurred prior to the Family or Medical Leave claim; or
2. under other State or federal temporary or permanent disability benefits law; or
3. a permanent disability policy or program of Marlborough Hospital.

In the event the aggregate amount You receive is in excess of your Average Weekly Wage, your Weekly Benefit Amount will be reduced by the amount of Wages or wage replacement that You receive from a temporary disability policy or program of Marlborough Hospital.

(d) Use of Earned/CARE Time

During any period in which You use paid time off such as earned time, paid sick time or other form of paid leave, You may not also receive paid benefits under this Plan – though paid time off taken for a Qualifying Reason will count against Your available allotment of leave under this Plan in a given Benefit Year.

X. Claim Determination

All claims for benefits must be supported by a certification evidencing that the leave is for a Qualifying Reason.

(a) **Medical Leave.** The certification must be from a Health Care Provider and include appropriate documentation of your serious health condition, including but not limited to:

1. the start date of the Serious Health Condition as well as the expected duration;
2. information to substantiate that You are incapacitated from work due to your serious health condition; and
3. information regarding the need for intermittent or reduced leave, if applicable

(b) **Family Leave to care for a family member with a serious health condition.** The certification must be from a Health Care Provider and include appropriate documentation, including but not limited to:

1. the start date of the family member's health condition as well as the expected duration;
2. information to substantiate that You are needed to care for the family member; and
3. information regarding the need for intermittent or reduced leave, if applicable

(c) **Family Leave for the birth of a Child.** Appropriate documentation of the Child's birth date, such as the Child's birth certificate or a document issued by the Health Care Provider of the Child or the Health Care Provider of the person who gave birth, stating the Child's birth date.

- (d) **Family Leave for the placement of Child for Adoption or Foster Care.** Appropriate documentation of the date of the placement, such as a document issued by the Health Care Provider of the Child, an Adoption or Foster Care agency involved in the placement or by other individuals that confirm the placement and the date of placement.
- (e) **Family Leave for a Qualifying Exigency arising out of the fact that a family member is on active military duty or has been notified of an impending call or order to active duty in the Armed Forces.** Appropriate documentation of the need for leave, including but not limited to:
 1. a copy of the family member's active duty orders, or
 2. a letter of Impending Activation from the family member's Commanding Officer, or
 3. other documentation reasonably acceptable in circumstances where, for good cause shown, the applicant is unable to produce the documentation specified in 1. or 2.
- (f) **Family Leave to care for a family member who is a covered service member.** The certification must be from a Health Care Provider and include appropriate documentation, including but not limited to:
 1. the start date of the family member's health condition as well as the expected duration;
 2. information to substantiate that You are needed to care for the family member;
 3. information regarding the need for intermittent or reduced leave, if applicable; and
 4. an attestation by the service member's Health Care Provider and the Covered Individual that the health condition is connected to the service member's military service.

All presumptions shall be made in favor of the availability of leave and the payment of leave benefits.

XI. Appeals

If your request for paid leave is denied in whole or in part, You will be provided with the specific reasons for the denial in writing. Instructions on how to file an appeal with the Department of Family and Medical Leave will be included as well as any applicable time limits.

XII. Job Protection, Prohibition on Retaliation, and Fitness for Duty at Close of Medical Leave

- (a) **Job Protection.** When You return to employment at the close of a period of approved family or medical leave, You shall be restored to your previous position or to an equivalent position, with the same status, pay, Employment Benefits, length-of-service credit and seniority as of the date of leave. Marlborough Hospital shall not be required to restore any employee who has taken family or medical leave to the previous or to an equivalent position if other employees of equal length of service credit and status in the same or equivalent positions have been laid off due to economic conditions or other changes in operating conditions affecting employment during the period of leave; provided, however, that the employee who has taken leave shall retain any preferential consideration for another position to which the employee was entitled as of the date of leave. Nor shall Marlborough Hospital be required to restore an employee who was hired for a specific term

or only to perform work on a discrete project, if the employment term or project is over and Marlborough Hospital would not otherwise have continued to employ the employee.

Upon reinstatement, taking family or medical leave under this Plan shall not affect your right to accrue vacation time, sick leave, bonuses, advancement, seniority, length-of service credit or other Employment Benefits, plans or programs. Leave periods will not be treated as credited service for purposes of benefit accrual, vesting and eligibility to participate.

During the duration of your family or medical leave, Marlborough Hospital shall continue to provide for and contribute to your employment-related health insurance benefits, if any, at the level and under the conditions that coverage would have been provided if You had continued working continuously for the duration of such leave. Your portion of any employment-related health insurance benefits shall be remitted by You in accordance with Marlborough Hospital's uniformly-applied policies or practices.

- (b) **Retaliation.** It shall be unlawful for Marlborough Hospital to threaten to retaliate or to retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening or in any other manner discriminating against an employee for exercising any right to which such employee is entitled or with the purpose of interfering with the exercise of any right to which such employee is entitled.

It shall be unlawful for Marlborough Hospital to threaten to retaliate or to retaliate by discharging, firing, suspending, expelling, disciplining, through the application of attendance policies or otherwise, threatening or in any other manner discriminating against an employee who has filed a complaint or instituted or caused to be instituted a proceeding under or related to this anti-retaliation provision, has testified or is about to testify in an inquiry or proceeding or has given or is about to give information connected to any inquiry or proceeding relating to this provision. Nothing in this Plan, however, shall limit Marlborough Hospital's ability to reasonably communicate with an employee or Covered Contract Worker who is approved for leave benefits.

Additionally, Marlborough Hospital may require an employee who has been approved for leave benefits to comply with reasonable attendance and call in procedures established by Marlborough Hospital. An employee who is approved for Intermittent Leave benefits must work with Marlborough Hospital to make an effort to take leave so as not to unduly disrupt Marlborough Hospital's operation. Furthermore, an employee who takes leave on an intermittent or Reduced Leave Schedule and who fails to work during the times agreed to between Marlborough Hospital and the employee may be subject to discipline. An employee who fails to return to work or to the employee's regular work schedule following the expiration of the leave period may be subject to discipline.

- (c) **Fitness for Duty at Close of Medical Leave.** Prior to being eligible for reinstatement following a period of Medical Leave, you will be required to present Marlborough Hospital with certification from your Health Care Provider that You are able to resume work. Within five (5) business days of approval of a claim for Medical Leave, Marlborough Hospital will provide You with a list of the essential functions for your position and require that, prior to reinstatement, your Health Care Provider certify your ability to perform the identified essential functions.

Marlborough Hospital shall not require a fitness for duty certification for each absence taken on an intermittent or reduced leave basis and may only require such certification once every thirty (30) days if reasonable safety concerns exist regarding Your ability to perform your duties.

Marlborough Hospital may delay or deny reinstatement to any Covered Individual returning from Medical Leave if appropriate certification is not timely received.

XIII. Termination of the Plan

This plan is intended to remain in force for the period of at least one year, to be renewed at the option of Marlborough Hospital annually.

Covered Individuals on leave (continuous or intermittent) on the date this Plan terminates will continue to be paid benefits until the earlier of the date they return to work or they exhaust their continuous leave allotment.

XIV. Claims Administration

Claims administration provided as of the Plan Effective Date by:

Sedgwick Claims Management Services, Inc.
Third Party Administrator for:

The Prudential Insurance Company of America
751 Broad Street
Newark, New Jersey 07102