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**Policy Title:** Family and Medical Leave Act (FMLA) Leaves of Absence

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**Scope:** Team Members as set forth below

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**Policy Number:** HR-POL-6001

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**Policy Sponsor/Manual:** Human Resources

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## I. POLICY STATEMENT

AlerisLife provides eligible team members with the opportunity to take unpaid leaves of absence in accordance with the federal Family & Medical Leave Act ("FMLA"), as amended, as well as any applicable state law.

## II. DEFINITIONS

- A. **"Active Duty"** means duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation pursuant to a provision of law.
- B. **"Armed Forces."** The Army, Navy, Air Force, Marine Corps or Coast Guard, including the National Guard and Reserves.
- C. **"Child"** means a team member's biological, adopted, foster, step, legal ward or a child for whom the team member stands or stood in loco parentis. The child must be less than 18 years of age or if 18 years of age or older, must be incapable of taking care of himself/herself due to a mental or physical disability. In the case of FMLA leave taken to care for an injured Servicemember or due to a qualifying exigency, the child may be of any age.
- D. **"Continuing Treatment."**
  - 1. A period of incapacity of more than 3 consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - i. 2 or more treatments by a Healthcare Provider, nurse under the direct supervision of a Healthcare Provider or provider of healthcare services, within 30 days of the first day of incapacity, unless extenuating circumstances exist; or
    - ii. At least 1 treatment by a Healthcare Provider, which results in a regimen of continuing treatment under the supervision of a Healthcare Provider.
  - 2. Treatment by a Healthcare Provider means an in-person visit to a Healthcare Provider. Further, the first in-person visit must take place within 7 days of the first day of incapacity.

3. A period of incapacity due to pregnancy or prenatal care.
  4. A period of incapacity due to a chronic serious health condition, which requires periodic visits (at least 2 per year) for treatment by a Healthcare Provider, nurse or under direct supervision of a Healthcare Provider or continues over an extended period of time and may cause episodic incapacity.
  5. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's or severe stroke).
  6. Conditions requiring multiple treatments.
- E. **"Covered Servicemember."** A member of the United States Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.
- F. **"Healthcare Provider."** A doctor of medicine or osteopathy, who is authorized to practice medicine or surgery by the state in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing health care services. The provider must be authorized to diagnose and treat physical or mental health conditions.
- G. **"Inpatient Care."** An overnight stay in a hospital, hospice or residential medical care facility, including the inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore or recovery therefrom, or any subsequent treatment in connection with such inpatient care.
- H. **"Next of Kin"** means the nearest blood relative other than the Servicemember's spouse, parent, son or daughter, in the following order of priority: Blood relatives designated in writing by the Servicemember, blood relatives who have been granted legal custody of the Servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins.
- I. **"Outpatient Status."** The status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- J. **"Parent"** means the biological parent of a team member or an individual who stands or stood in loco parentis to the team member when the team member was a Child as defined above. In the case of FMLA leave taken to care for an injured Servicemember or due to a Qualifying Exigency, parent also includes an adoptive parent, stepparent or foster parent.
- K. **"Qualifying Exigency."** One or more of the following events that occurs as a result of the team member's family member's Active Duty or membership in the Armed Forces, including the National Guard or a reserve component: (a) short-notice deployment; (b) military events and related activities; (c) childcare and school activities; (d) financial and legal arrangements; (e) counseling (non-medical); (f) rest and recuperation; (g) post- deployment activities; and (h) additional activities, provided that the Company and the team member agree that such leave shall qualify and with respect to the timing and duration of the leave.
- L. **"Serious Health Condition."** An illness, injury, impairment or physical or mental condition that involves Inpatient Care or continuing treatment by a Healthcare Provider.

- M. **“Serious Injury or Illness.”** An injury or illness incurred by a Covered Servicemember in the line of duty or active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.
- N. **“Spouse.”** A team member’s current husband or wife or otherwise termed spouse who is considered such under the laws of the state in which the workplace is located.

### III. POLICY GUIDELINES

- A. To qualify for family and medical leave under this policy, team members must meet all of the following criteria:
  - 1. Have been employed for at least 12 months prior to the leave, although the 12 months need not be consecutive (however, any separate period of employment prior to 7 years before the first date the FMLA leave is set to begin need not be counted); and
  - 2. Have worked at least 1,250 hours during the 12-month period immediately preceding the start date of the leave.
  - 3. Fulfill any notice, documentation, or other requirements, including those that may arise after the initial Request for FMLA
- B. Certain team members who are not eligible for FMLA leave may be eligible for a leave of absence under similar state laws.

### IV. PROVISION(S) AND PROCEDURE(S)

- A. Qualifying Reasons for FMLA Leave. To qualify as family and medical leave under this policy, the team member must be taking leave for one of the reasons listed below:
  - 1. The birth of a Child and to care for the newborn Child;
  - 2. The placement with the team member of a Child for adoption or foster care;
  - 3. To care for the team member’s Spouse, Child or Parent with a Serious Health Condition;
  - 4. Because of a Serious Health Condition that renders the team member unable to perform the functions of his/her job;
  - 5. Because of any Qualifying Exigency; or
  - 6. To care for the team member’s Spouse, Child, Parent or Next of Kin who has incurred a serious injury or illness in the line of duty on Active Duty that renders him/her medically unfit to perform the duties of his/her office, grade, rank or rating. The team member may take caregiver leave at any time up to five years after the Covered Servicemember is discharged from the military.
- B. Length of Leave.
  - 1. Eligible team members are entitled to up to 12 weeks of unpaid FMLA leave during a single rolling 12 month period (looking backward from the first date of the requested leave).
  - 2. When leave is taken under this policy to care for an injured or ill Covered Servicemember, the team member is entitled to up to 26 weeks of unpaid FMLA leave during a single 12-month period to care for the Servicemember, combined with leave for any other FMLA qualifying reason (looking backward from the first date of the requested leave). This means that leave to care for an injured or ill Covered Servicemember may not exceed 26 weeks in a single 12-month period, when combined with other qualifying FMLA leave.

3. Leave for the birth or adoption of a child (including foster care placement) must conclude within 12 months of the birth or placement.
- C. Spouses Both Employed by AlerisLife.
1. If two spouses are employed by AlerisLife, Five Star Senior Living and/or Ageility, the combined leave for leave to care for an injured or ill Covered Servicemember, or when such leave is taken in combination with leave for any other qualifying event identified in this policy, shall not exceed 26 weeks during the rolling 12-month period.
  2. The combined leave for the reasons listed below shall not exceed 12 weeks of leave during the rolling 12-month period. When either spouse uses FMLA leave for one of these reasons, the time is deducted from the spouses' combined 26-week or 12-week entitlement.
    - i. Birth of a Child or to care for the newborn after birth.
    - ii. Placement of a Child for adoption or foster care or to care for the Child after placement.
    - iii. To care for the Team Member's Parent with a Serious Health Condition.
    - iv. In the case of a Qualifying Exigency.
  3. Spouses each receive the balance of their 12-week entitlement during the rolling 12-month period for other FMLA purposes listed below, less any FMLA leave that the individual used from the spouses' combined 12-week entitlement.
    - i. To care for each other.
    - ii. To care for the Team Member's Child with a Serious Health Condition.
    - iii. Because a Serious Health Condition makes the Team Member unable to perform the essential functions of the Team Member's position.
  4. The Company cannot require the FMLA leave to be taken by one spouse rather than the other. Also, these restrictions on spouses do not apply to siblings or unmarried domestic partners employed by the Company.
- D. Workers Compensation. Team members who have suffered a work-related injury will be placed on FMLA leave if their injury results in a Serious Health Condition that requires them to be absent from work and the FMLA leave will run concurrently during any period the team member is receiving workers' compensation payments. Team members who are on "transitional duty" will not be placed on FMLA leave or will be taken off FMLA leave for those hours worked in a transitional duty job. Team members on transitional duty who are working less than their regularly scheduled weekly hours of work will be paid their regular wages for all hours worked and granted unpaid intermittent FMLA leave for any hours they are unable to work because of a Serious Health Condition. In some cases, workers' compensation payments may apply. A team member may, subject to any applicable workers' compensation requirements, decline the location's offer of a "transitional duty" and remain on unpaid FMLA leave until the 12-week entitlement period is exhausted.
- E. Intermittent FMLA Leave.
1. Leave may not be taken on an intermittent or reduced leave basis for the birth, adoption or foster placement of a Child.
  2. Leave for a Serious Health Condition or to care for a Covered Servicemember may be taken intermittently or on a reduced schedule, if medically necessary. This intermittent

or reduced leave applies for either the team member's personal medical condition or for that of the care of a family member or Covered Servicemember.

3. If a team member takes leave on an intermittent or reduced hours basis, only the amount of leave actually taken may be counted toward the 12 or 26 weeks of FMLA leave to which the Team Member is entitled.
    - i. For example, if a team member who normally works five days a week takes off one day for intermittent leave, the team member would use one-fifth of a week of FMLA leave. Similarly, if a full time team member who normally works eight hour days works four hour days under a reduced leave schedule, the team member would use one half week of FMLA leave each week.
  4. Where a team member normally works a part time schedule or variable hours, the amount of leave to which the team member is entitled is determined on a pro rata or proportional basis by comparing the new work schedule with the team member's normal schedule.
    - i. For example, if a team member who normally works 30 hours a week works only 20 hours a week under a reduced hours leave schedule, the team member's 10 hours of leave would constitute one-third of a week of FMLA leave for each week the team member works that reduced-hours schedule. If a team member's schedule varies, the FMLA leave calculation is based on the weekly average of the team members' hours scheduled for the 12 months prior to the beginning of the FMLA leave.
  5. In situations where the team member is requesting intermittent leave or a reduced leave schedule, the team member's supervisor must be consulted in order to schedule such leave to the largest extent possible so as not to unduly disrupt the location's operations. Team members must make a reasonable effort to schedule any intermittent leave for medical treatments to minimize the disruption to Five Star Senior Living operations.
  6. Regardless of whether or not the team member's request for intermittent or reduced leave is foreseeable, the Company may require the team member to transfer temporarily to an alternative position, with equivalent pay and benefits, that better accommodates these recurring periods of leave, thereby ensuring the location will have proper staffing at all times.
- F. Use of Paid Leave During FMLA Leave. Leaves of absence under the FMLA are generally unpaid. However, if the location where the team member works provides paid leave (including sick, personal or vacation time) for which the team member is eligible. The team member must use paid leave concurrently with the 12 weeks of FMLA Leave (or 26 weeks in the case of care for a Covered Servicemember), and before taking any unpaid FMLA leave unless covered by applicable state or disability benefits. The team member will be required to use all but 40 hours of accrued paid leave. The team member may elect, however, to use all accrued paid time if he/she so desires. If, however, the team member is not eligible to take paid leave for the purpose for which he or she is taking the FMLA leave, the Company is not required to allow the team member to substitute that paid leave. Disability leave for the birth of a Child or due to the team member's Serious Health Condition, including workers' compensation payments (to the extent the team member qualifies) will be designated as

FMLA leave as appropriate and will run concurrently with FMLA leave. The Company will advise the team member in writing of his/her obligation to substitute paid leave (sick, personal and/or vacation) within 5 business days from the date that the Company learns that the leave is for FMLA reasons.

G. Healthcare Provider Certifications.

1. FMLA Leave is administered by NY Life Insurance (“the Leave Administrator”). The Leave Administrator will require an eligible team member intending to take leave for his/her Serious Health Condition, the Serious Health Condition of a Family Member or the Serious Illness or Injury of a Covered Servicemember to have a Healthcare Provider certify the condition. A FMLA Medical Certification will be provided to the team member by the Leave Administrator and must be fully completed and signed by the team member and/or healthcare provider within 15 calendar days of the request to authenticate the leave.
2. If the certification is insufficient or incomplete, the team member will be notified in writing and will have seven (7) days to cure the insufficiency. Failure to cure the insufficiency may result in denial or delay of leave. After the team member provides the requested clarification, the Leave Administrator may contact the team member’s Healthcare Provider to further clarify or to authenticate the certification, The team member’s direct supervisor may not contact the Healthcare Provider. When leave questions or medical certification are in question, the NY Life will work with the team member to resolve the questions and notify the Company accordingly.
3. Team members applying for FMLA leave may be required to obtain second or third medical opinions which will be at the expense of the Company. Periodic recertification must be provided by the team member at the team member’s expense, and no second or third opinions are allowed at the recertification stage. Periodic reports from the team member during FMLA leave, regarding the team member’s status and intent to return to work may be requested.
4. When a team member has taken leave because of his/her own serious health condition and returns from leave, he/she must submit a statement from his/her healthcare practitioner certifying that the team member is able to return to work. Return to work certifications cannot be requested when a team member returns from intermittent leave.
5. Under certain circumstances, team members returning from a medical leave may also be required to provide certification from a licensed physician indicating that the team member is able to perform the essential functions of his/her position with or without reasonable accommodation (a “Fitness for Duty” certification). The Leave Administrator will notify the team member if a Fitness for Duty certification will be required at the time that the requested leave is designated as FMLA leave. In all instances, the Company reserves the right to require a team member on any medical leave, including maternity/pregnancy-related leave, to be examined at Company expense by a Company-selected physician prior to her/his return to work.
6. If the certification is required to determine whether the team member’s leave qualifies as FMLA leave, failure to provide required medical certification in a timely manner may result in denial of leave until proper certification is provided. If the certification is

required to determine whether the team member is qualified to return to work, failure to provide required medical certification in a timely manner may result in denial of return until proper certification is provided.

7. The Company may also require a team member taking leave due to a Qualifying Exigency to provide a copy of the Servicemember's Active Duty orders, and other pertinent documentation, the first time such leave is requested.
- H. Company Benefits During FMLA Leave.
1. When a team member is on FMLA leave, the Company will continue the team Member's benefits, including medical and dental benefits, during the leave period, at the same level and under the same conditions as if the team member had continued to work. However, during a leave, a team member is not entitled to accrue benefits that would otherwise accrue if leave had not been taken.
  2. Team members who are on leave maintain any credit accumulated prior to the leave based on the length of service for benefits, such as vacation and sick leave. However, they do not continue to accrue service credit during the unpaid portion of the leave.
  3. The FMLA does not give a team member on leave any greater rights or benefits than a team member who is not on such leave. If the terms of benefits are modified for active team members, those modifications will apply to any team member on FMLA leave.
  4. During the period of FMLA leave, the Company shall continue to make contributions to the health care plan in the same amount as if the team member were continuously employed. While on leave, the team member continues to be responsible for his/her share of the premium, at the same rate and in the same amount as if continuously employed. During paid leave, the Company will continue to make payroll deductions to collect the team member's share of the premium. During unpaid leave, the team member must submit health plan premiums to the Company no later than the first of each month. If the team member's premium payment is more than 30 days late, the team member's health and/or dental coverage may be dropped for the duration of the leave. The Company will notify the team member if coverage is to be dropped for non-payment. The team member will be required to complete and sign the Team Member Authorization form for health care premiums at the beginning of the leave. If a team member fails to return to work at the end of the leave period, the team member will be required to reimburse the Company for its share of the medical insurance expense incurred in providing coverage during the leave period, unless the team member fails to return to work because of the continuation, recurrence or onset of a serious health condition. As to non-health benefits, the Company is entitled to recover only the costs incurred in paying for the team member's share of the non-health premiums. Nothing in this policy limits the right or discretion of Five Star to amend, modify, interpret or eliminate any insurance or benefit plans or policies at any time.
- I. Reporting Status During Leave. The Company requires all team members on FMLA leave to periodically update the Leave Administrator of their status, and of their intent to return to work upon completion of the leave. This form must be filed at least two business days before the team member's anticipated return.
- J. Reinstatement. At the conclusion of the FMLA leave, and provided the return to work occurs within the 12-week leave allotment (or 26-week allotment in the case of care for a Covered



Servicemember), the team member is entitled to reinstatement to his/her former position or an equivalent position with equivalent status, pay, benefits and other terms or conditions of employment to the extent required by law. The Company will reinstate a team member when he/she has met the necessary requirements under the FMLA. Certain “key employees” may be exempt from this requirement. Before being returned to work due to the team member’s Serious Health Condition, he/she may be required to present a fitness-for-duty certification from his/her Health Care Provider that the team member is medically able to return to work and perform the essential functions of his/her position, with or without reasonable accommodation.

1. A team member who fails or is unable to return to work prior to or at the expiration of the 12 weeks of leave (or 26 weeks in the case of care for a Covered Servicemember) will have her/his employment relationship terminated unless they seek and secure, in advance, a personal leave or medical leave of absence or unless an extended leave of absence is part of a reasonable accommodation under the ADA or other applicable state law. Except as noted above, team members who do not return to work upon the expiration of an FMLA leave will be treated as having voluntarily resigned their employment.
  2. A team member may be subject to termination during an FMLA leave of absence for reasons including, but not limited to, the following:
    - i. A medical determination that the team member is physically unable to return to work or to return to work without imminent and substantial risk of injury or further injury to herself/himself or significantly greater risk to others.
    - ii. Team members whose positions have been eliminated or restructured while they were on FMLA leave are not entitled to be reinstated to their previous position at the end of their leave period because they would not have otherwise been employed in that position even if they had not taken any leave.
    - iii. Significant violation of Company policy.
- K. Notice Requirements and Procedures.
1. Team members requesting FMLA leave must submit an application to the Leave Administrator with an explanation of the reasons for the needed leave. When the need for FMLA leave is foreseeable, such as to the expected birth or placement of a Child, the team member must provide at least 30 days advance notice of their intention to take leave. When the need to leave is for reasons relating to a family member’s Active Duty and the leave is foreseeable, the team member must give notice as soon as is reasonable and practicable. When the necessity for leave is due to a family member’s or a team member’s own Serious Health Condition or to care for an Injured Servicemember, and the need for leave is foreseeable, he/she must provide the facility with at least 30 days advance notice, if practicable. If 30-day advance notice is not practicable, or if the leave is unforeseeable, notice must be given “as soon as practicable.” Ordinarily, as soon as practicable would mean at least verbal notification within one or two business days from the time when the need for leave becomes known to the team member.
  2. The team member’s notice must include the FMLA qualifying reason and the anticipated timing and duration of the leave. The Leave Administrator has the right to ask for



additional information to determine if a FMLA qualified leave is being sought by the team member, and to clarify any pertinent details of the leave and the team member is required to respond and/or provide the additional information to enable NY Life to determine if the leave qualifies for FMLA leave. The Company has the right to require team members requesting FMLA leave to comply with customary and usual notice procedures, as set forth in other leave- related policies, absent extenuating circumstances.

3. As soon as NY Life is notified of a team member's intent to take FMLA leave, it will provide the team member with an Eligibility and Rights & Responsibilities form and a copy of the FMLA policy. The Eligibility and Rights & Responsibilities form will require the team member to submit additional information, including medical certification, in order for the Leave Administrator to determine whether the requested leave qualifies for FMLA leave. The team member must return the medical certification form within 15 calendar days.
4. Once the Leave Administrator has reviewed the necessary paperwork and made a determination as to the team member's request, a Designation Notice will be provided to the team member within five days from the date the Leave Administrator determines whether the need for leave qualifies under the FMLA.
5. One week prior to returning from leave, the team member will contact his or her supervisor to confirm the date and time of his/her return to work. The team member will also submit a Fitness For Duty certification, if applicable, at least 2 business days before the anticipated return. A team member who fails to return to work on the designated date and time will be deemed to have voluntarily resigned their position.

## **V. RELATED DOCUMENTS**

Personal Leave Policy

Leave of Absence Process

Leave Administrator Claim Form

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**Prior Revision Date:** 8/1/18



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