## **FAMILY & MEDICAL LEAVE POLICY**

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. Failure to comply with this policy will be considered a policy violation and be addressed as such. Any employee who fraudulently obtains or uses FMLA will be subject to immediate termination. FMLA does not shield an employee from discipline or termination if the employee was involved in misconduct that warrants such in accordance with Isaac’s Discipline and Termination Policy and Process (policies, section L).

**Use of FMLA leave**. In accordance with the Family and Medical Leave Act (FMLA), as amended, Isaac’s Deli, Inc. grants leave without pay to eligible employees for **up to twelve (12) workweeks in a rolling 12-month period** (calculated by counting backward from the first day of leave), or **up to twenty-six (26) workweeks during a single 12-month period for military caregiver leave** (see definition below). This FMLA leave is a guaranteed period of time eligible employees can be absent from work with job protection. The time off is not paid, unless the employee is taking paid time off concurrently with FMLA leave, is entitled to disability pay under a short-term disability policy or is collecting workers’ compensation benefits. Employees may request or use FMLA leave to cover the time they need to be away from work for any of the following reasons:

* To care for a newborn child or a newly adopted or newly placed foster care child, as long as the leave is taken in the year following the child’s birth or placement **\***
* To care for their child, spouse, or parent who has a serious health condition
* For the employee’s own serious health condition that leaves the employee unable to perform his/her job, including incapacity due to pregnancy, prenatal care and childbirth.
* The existence of a “qualifying exigency” arising out of a call or impending call to active duty of the employee’s spouse, son, daughter, or parent who is in the National Guard or Reserves.
* To care for a covered service member who incurred an injury or illness in the line of active duty in the Armed Forces, National Guard or Reserves for which the service member is undergoing medical treatment, recuperation or therapy or is in outpatient status or on the temporary disability retired list, and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; provided the employee is the spouse, child, parent or “next of kin” (nearest blood relative) of the service member. **NOTE: This service member family leave is the only type of leave under this Policy that can be up to 26 workweeks during a single 12-month period (rather than 12 workweeks).\***

**\***For these types of leave (to care for a new child or service member family leave), if a husband and wife are employed by the Company, they are entitled only to a total or aggregate of 12 weeks of leave to care for a new child or 26 weeks for service member family leave.

**Eligibility**. To be eligible for FMLA leave, an employee must have worked for Isaac’s Deli, Inc. for at least one year (excluding service prior to a service break of 7 years or more) and performed at least 1,250 hours of work during the previous 12 months; AND at least 50 employees must be employed by Isaac’s Deli, Inc. within 75 miles of the employee’s worksite.

**Requesting leave**. Employees who know they need FMLA leave at least 30 days before the leave begins MUST give their supervisors a minimum of 30 calendar days’ advance notice. Employees who cannot foresee the need for FMLA leave 30 days in advance must give as much notice as practicable. This generally means notifying Isaac’s Deli within one or two workdays of the time an employee first learns of the need for leave, unless extenuating circumstances exist. Employees must follow Isaac’s Deli, Inc.’s usual and customary call-in procedures, which include:

When calling off work, use the following guidelines:

1. Always call in yourself. Don’t have a friend or family member call for you.
2. Always talk to a manager or to your immediate supervisor for non-restaurant employees.
3. Call as soon as possible so there is more time to try to replace you.

Employees must provide sufficient information for Isaac’s Deli, Inc. to determine if the leave qualifies for or may qualify for FMLA protections, as well as the anticipated timing and duration of the leave. In addition, Employees must advise Isaac’s Deli, Inc. if the leave is for a reason for which FMLA leave was previously taken.

If an employee takes sick leave for a condition that progresses into a serious health condition and the employee requests leave as provided under this policy, the company may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

**Designation of FMLA Leave and Documentation.** Any time an employee requests leave under this policy or Isaac’s Deli, Inc. believes an employee’s leave qualifies as FMLA leave, Human Resources will send to the employee information on FMLA leave along with forms that need to be completed. Isaac’s Deli, Inc. will officially designate in writing the employee’s leave as FMLA leave if the information and completed documents indicate that it qualifies as leave under the Family and Medical Leave Act, and will advise the employee of the amount of leave that will be counted against the employee’s leave entitlement, if the amount of leave is known. If Isaac’s Deli, Inc.

determines the employee is not eligible for FMLA leave, Isaac’s Deli, Inc. will provide the employee with the reason(s) for the ineligibility.

Employees who request FMLA leave because of a serious health condition, whether their own or a family member’s, or to care for an injured or ill service member, family leave must submit a completed “Certification of Health Care Provider” or, in the case of military caregiver leave a “Certification for Serious Injury or Illness of Covered Service member”, to the Human Resources Department **within 15 days** before the leave can be approved.

An employee returning from an approved FMLA leave because of his/her own serious health condition must provide documentation from his/her treating health care provider stating that he/she is able to return to work and that he/she is able to perform the essential requirements of his/her job with or without a reasonable accommodation by returning a completed Fitness For Duty Certification. If a reasonable accommodation is needed, the exact nature of the accommodation needs to be provided in writing by the attending health care provider.

Employees who request FMLA leave for a “qualifying exigency” are required to submit two certifications: one to certify the active duty of the family member (this would normally be the Active Duty Order/Notice), and the other to certify the qualifying exigency (“Certification of Qualifying Exigency”).

Isaac’s Deli, Inc. may designate an employee’s leave as FMLA leave even if the employee does not request it as long as the leave falls within one of the purposes set forth above.

**Substitution of Paid Leave.** Any employee taking FMLA leave must use any paid time off he/she has available under any Isaac’s Deli, Inc. policies at the commencement of the leave, unless they are also receiving workers’ compensation benefits. FMLA leave will run concurrently with paid time off, short-term disability and workers’ compensation leaves if the employee meets FMLA eligibility requirements. FMLA leave is generally unpaid.

**Recertification and Second Opinions.** In some cases, Isaac’s Deli, Inc. may require the employee to submit to an examination in order to establish that he/she can safely and effectively perform all of the essential functions of the job prior to returning to work. Isaac’s Deli, Inc. may also request a recertification from the health care provider of the employee’s or family member’s medical condition if the employee requests an extension to the original leave period OR during the initial leave period if there is a significant change in circumstances. When Isaac’s Deli, Inc. has reason to doubt the validity or reliability of a health care provider’s report, the Company reserves the right to obtain the opinion of another health care provider of the Company’s choice. This health care provider will not be one regularly used by Isaac’s Deli, Inc., and the Company will pay for the cost of the examination. If the second opinion conflicts with that of the

employee’s health care provider, Isaac’s Deli, Inc. and the employee will select a third provider, at company expense, whose opinion shall be final and binding.

This section does NOT apply to military caregiver leave.

**Intermittent leave**. Employees taking leave because of their own or a child’s, spouse’s or parent’s serious health condition or a service member’s injury or illness may take their allotment of FMLA leave intermittently or in accordance with a reduced work schedule, **if this is medically necessary**. The certification(s) identified and discussed above must document the medical necessity for intermittent leave and the expected schedule and duration of the intermittent leave.

Qualifying exigency leave may also be taken on an intermittent basis.

Where employees have some control over the timing of their leave, they are expected to consult with their supervisors to try to arrange a mutually acceptable time. Employees requesting intermittent leave must make a reasonable effort to schedule medical treatments and appointments in a way that causes minimal disruption of Isaac’s Deli operations. Employees requesting intermittent leave or a reduced schedule may be temporarily transferred to an alternative position with equivalent pay and benefits that is better suited to recurring work interruptions.

Employees taking leave to care for a newly born or newly placed child do not have a legal right to take intermittent leave (unless it is medically necessary) and can do so only with their supervisor’s consent

Regularly scheduled work missed due to intermittent FMLA leave may not be counted towards the employee’s FMLA entitlement if the hours are made up within the same workweek.

**Privacy and leave requests**. Employees must inform their supervisors that they need family or medical leave and when they expect to be absent. However, supervisors should not ask or inquire about the reasons for the employee’s leave request or contact the employee’s health care provider(s). Instead, to ensure the employee’s privacy, the Human Resources Department makes any necessary inquiries and evaluates whether there is a medical need for the leave. The Human Resources Department also is responsible for ensuring that all medical information provided by employees and providers is maintained in the strictest confidence.

**Compensation and benefits during leave**. FMLA leave is unpaid, unless it is taken together with paid time off provided under other Isaac’s Deli policies or the employee is covered under workers’ compensation. Employees are required to use any available paid time off during their FMLA leave before taking leave without pay. However, if FMLA is taken together with Worker’s Compensation, employee is not required to use their PTO to make up the difference between Workers’ Compensation and full pay. Paid

time off under any of Isaac’s Deli policies will run concurrent with FMLA. Employees on FMLA leave do not receive holiday pay.

Employees on FMLA leave continue to be covered by Isaac’s Deli, Inc. group health benefits plan on the same terms that are applicable for active employees. FMLA leave does not cause employees to lose any previously accrued employment benefits. However, employees are not required to continue their group health coverage, but upon returning to work, they can be reinstated on Isaac’s Deli, Inc. group health coverage. If an employee elects to continue health benefits for himself/herself and/or his/her dependents, the employee **must continue to make the required employee contributions.**

Use of FMLA will not result in the loss of any employment benefit that accrued prior to the start of an employee’s leave provided the employee follows all FMLA procedures and payment requirements. A FMLA leave of absence is not considered a break in service for determining Paid Time Off eligibility or length of continuous service with the Company. However, employees do not accumulate paid time off under other Isaac’s Deli, Inc. policies during an unpaid leave of absence. In cases where an employee accrues PTO annually and the employee’s anniversary date for PTO occurs during a FMLA leave, new PTO amounts will not take effect nor unused PTO lost until return from FMLA leave.

**Reinstatement following leave**. On returning from a FMLA leave of absence, an employee is normally restored to his/her original or equivalent position with equivalent pay, benefits, and other employment terms. An exception to this restoration procedure is for certain “key employees” (as defined in the FMLA), who are notified of their status when they first request FMLA leave. Key employees who take FMLA leave are reinstated to their former or equivalent positions only if their reinstatement does not cause Isaac’s Deli, Inc. substantial and grievous economic injury. This is determined on a case-by-case basis. There are also limited business circumstances, such as a location closing or mass layoff, which could result in a loss of the employee’s position.

If at the end of FMLA leave, an employee is still not able to return to their job because they are unable to perform the job, either with or without reasonable accommodation, due to illness or injury, they may request an Extended Leave (*Benefits section-h*) or Isaac’s Deli, Inc. will allow the employee to bid for any unfilled position that the employee is qualified for and capable of performing with or without accommodation. In either event, at the conclusion of FMLA leave or an approved extended leave, if an employee is unable to return to either their job or an unfilled position which they are qualified for and capable of performing, because of illness or injury, reemployment can no longer be guaranteed. However, the employee may apply for vacant positions when he/she is able to return to work.

**Fitness for Duty Certification.** Upon returning from a leave that was due to the employee’s own serious health condition, the employee must present to his/her

supervisor and/or Human Resources a Fitness for Duty Certification completed and signed by his/her health care provider certifying that the employee is capable of safely returning to work and performing the essential functions of his/her job.

**Definitions.**

Child, Son or Daughter – The biological child\*, adoptive child, foster child, stepchild or legal ward of the employee who is under the age of 18, OR is 18 years of age or older but incapable of self-care because of a mental or physical disability or, in the case of qualifying exigency or military caregiver leave, is a service member in the Armed Forces, National Guard or Reserves regardless of his/her age.

\*Employees who do not have a legal or biological relationship with a child, but nonetheless provide day-to-day care and/or financial support for a child, meet the *in loco partentis* status under FMLA and may request FMLA leave. An employee seeking parental leave based on *in loco parentis* status must submit documentation and/or a written statement setting forth the basis of the *in loco parentis* relationship.

Health Care Provider – A doctor of medicine or osteopathy or physician’s assistant who is authorized to practice medicine or surgery in the state in which he/she practices, and any other provider determined by regulations adopted by the U.S. Secretary of Labor to be capable of providing health care services. Please note that there are certain specific requirements for a HCP for military caregiver leave.

Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves:

1. Any period of incapacity or treatment connected with inpatient care (an overnight stay in a hospital, hospice, or residential medical facility);
2. Any period of incapacity requiring absence of more than three (3) full, consecutive calendar days from work, school or other regular daily activities AND EITHER (a) includes at least two (2) in-person visits with a health care provider OR (b) includes at least one (1) in-person visit with a health care provider along with a regimen of continuing treatment; or
3. Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three (3) calendar days AND that requires at least two (2) in-person visits to a health care provider **per year**.

Qualifying Exigency – The following situations, and only the following, constitute a qualifying exigency **(this is an exclusive list):**

1. Short-notice deployment (7 days or less)
2. Military events and related activities
3. Child care and school activities (must be non-routine and related to the call to duty)
4. Financial and legal arrangements (must be non-routine and related to the call to duty)
5. Non-medical counseling (if it is medical, it falls under regular FMLA leave)
6. Rest and recuperation (up to 5 days per instance)
7. Post-deployment activities (limited to 90 days after the end of service)
8. Additional activities/events that arise out of the covered military duty, but Isaac’s Deli and the employee must agree on both the timing and duration of the leave.

Next of Kin – The nearest blood relative of a covered service member (other than his/her spouse, parent or child). There is a priority order set forth in the regulations. The covered service member may designate in writing his/her nearest blood relative for

purposes of caregiver leave, which designees would have first priority. If there is more than one person equal in priority, ALL those who are equal are eligible.

**Unlawful Acts by Employers.** The Family and Medical Leave Act makes it unlawful for any employer to: (1) interfere with, restrain, or deny the exercise of any right provided under the FMLA or (2) discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

**Employees’ Rights and Enforcement.** An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer for violations of

the FMLA. The FMLA does not affect any Federal or State law prohibiting discrimination, nor does it supersede any State or local law or collective bargaining agreement that provides greater family or medical leave rights than the FMLA.