

SETTLEMENT AGREEMENT BY AND BETWEEN
THE TOWN OF DUXBURY TOWN OF DUXBURY AND THE
DUXBURY POLICE COMMANDER ASSOCIATION, MCOP, LOCAL 376

The Town of Duxbury and the Duxbury Police Commander Association, MCOP, Local 376 hereby agree to the following terms, conditions, and understandings to be incorporated into a successor labor agreement. This Agreement is subject to ratification by the parties, and funding at a Special or Annual Town Meeting.

1. Term: From July 1, 2016 through June 30, 2019.
2. Wage: Effective July 1, 2016 a 2% increase on the wage scale.
Effective July 1, 2017 a 2% increase on the wage scale.
Effective July 1, 2018 a 2% increase on the wage scale.
3. Ensure that all lump sum payments for one time issues have language describing 'the last pay date in July' e.g. cleaning allowances.
4. An employee will not lose employer wide seniority for benefits and entitlements or benefit accruals (e.g. sick, vacation, and personal leave) obtained in another Duxbury municipal department when transferring to or from the Personnel Plan or from one collective bargaining unit to another collective bargaining unit. Bargaining unit seniority shall prevail with regard to any other seniority right which may exist under the CBA, including but not limited to use of vacations and posting for positions.
5. Future update to ARTICLE 10.13 Miscellaneous Provisions; Review/revise Police Department's drug testing policy to reflect current practice. These discussions will continue after the execution of this Agreement.
6. Add ARTICLE 11.13 Pay Practices; All Police Commander pay must be processed via direct deposit, payday will transition from bi-weekly Thursdays to bi-weekly Fridays, and electronic advice of same.
7. Change to ARTICLE 13.0 Grievance Procedure; italicized language Step 1- Within five (5) working days after the occurrence of the situation, condition, or action giving rise to the grievance, the Association shall present *a written grievance to the Chief, giving all the pertinent information relative to the grievance, the specific article and section of the contract allegedly violated relative to the grievance, and indicating the suggested remedy.* Failure to submit a grievance within 5 working days after the occurrence of the situation that is being grieved will automatically result in the dismissal of said grievance.
8. Change ARTICLE 17.0 Insurance and Pension
 - a. Remove 17.1
9. New Appendix B, Public Employee Committee MOA and note that the agreement can change in accordance with MGL c. 32B s. 21-23 and/or the terms of the memorandum of agreement.
10. Updated Appendix A, FMLA, SNLA, MMLA (now PLA) Leave Policies
11. Change ARTICLE 9.8.1 Sick Leave as follows:
 - a. Add "regular" in front of 'sick' in first sentence
 - b. Change 'department [al] average' to "Lieutenants average"
12. New ARTICLE 11.14 Pay Practices, Lieutenants will receive \$2,000 per year to be available while off duty; \$1,000 payable 'the second pay date in December' and \$1,000 payable 'the second pay date in June'

For the Town of Duxbury:

Dated: 5/23/16

Shawn Dahlen
Board of Selectmen

Theodore Flynn
Board of Selectmen

David Madigan
Board of Selectmen

Rene' Read
Town Manager

Matthew Clancy
Police Chief

For Duxbury Police Commander Association, MCOP Local 376

Dated: 5/19/16

Lewis Chubb

Michael Carbone

Appendix A

FAMILY AND MEDICAL LEAVE POLICY

It is the policy of the Town of Duxbury to provide leave in accordance with the Family and Medical Leave Act of 1993 ("FMLA").

All eligible employees are entitled to take up to twelve (12) work weeks of FMLA leave during a twelve month period under the following definitions and procedures.

ELIGIBLE EMPLOYEES:

Individuals who have worked for the Town for at least twelve months and provided at least 1,250 hours of service during the twelve months before the leave commences.

ELIGIBLE EMPLOYEES ARE ENTITLED TO FMLA LEAVE FOR:

1. The birth of a child and to care for the child or the adoption or placement for foster care of a child under 18 (or over 18 if the child has a physical or mental disability and is unable to care for him/herself).
2. A serious health condition which prevents the employee from performing the functions of his/her job.
3. To care for a child, parent or spouse who has a serious health condition.
4. Military service or family military leave
5. Caring for a family member recovering from an illness or injury suffered while on active military duty up to 26 weeks of unpaid leave in a single 12 month period.

DEFINITIONS:

CHILD: Biological, adopted or foster children, stepchildren, or the child of a person with legal guardianship or who has day-to-day responsibility to care for and financially support a child, even if there is no biological or legal relationship; foster child, a stepchild, a legal ward, or a child or a person standing in loco parentis.

CONCURRENT LEAVE: State and Federal mandated leave entitlements normally run concurrently with each other and with leave provisions under any applicable collective bargaining agreement or policy.

PARENT: The biological parent, or persons who had day-to-day responsibility to care for and financially support a child. Parents-in-law are not included.

REDUCED LEAVE SCHEDULE: Reduction in the number of hours per workday or workweek.

SERIOUS HEALTH CONDITION: An illness, injury, impairment or physical or mental condition that involves:

1. Treatment as an inpatient in a hospital, hospice or residential medical care facility; or
2. A health condition that requires continuing treatment by or under the supervision of a health care provider. Continuing treatment includes: a) two or more treatments by a health care provider; (b) two or more treatments by a health care practitioner on referral from, or under the direction of, a health care provider; c) a single visit to a health care provider that results in a regimen of continuing treatment under the supervision of a health care provider.
3. A health condition that requires 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 untreated, would likely result in an absence from work of more than five days.

Examples of serious health conditions include: Heart attacks, heart conditions requiring heart bypass or valve operations, most cancers, back conditions requiring extensive therapy or surgical procedures, strokes, severe respiratory conditions, spinal injuries, appendicitis, pneumonia, diabetes, epilepsy, asthma, alcoholism, emphysema, severe nervous disorders, injuries caused by serious accidents on or off the job, the need for prenatal care, childbirth and recovery from childbirth.

TWELVE MONTH PERIOD: The "rolling" twelve month period measured backward from the date any employee uses any FMLA leave.

SPOUSE: Defined in accordance with applicable State law, married couples that work for the Town are limited to a combined total of 12 workweeks during the 12 month period if leave is taken for birth or placement for adoption or foster care of a child or to care for a sick parent. Such leave to care for birth or placement for adoption or foster care of a child must be taken within 12 months beginning on the date of birth or placement for adoption or foster care.

PROCEDURE

NOTICE OF INTENT TO USE LEAVE:

Eligible employees will provide written notice of their intent to use FMLA leave to the Human Resources Department, thirty days in advance when the leave is foreseeable. For example, the birth or placement of a child for adoption, foster care, or planned medical treatment. When unforeseen events occur that require FMLA leave, the employees or a representative of the employee must provide written notice as soon as both possible and practical but in no event later than one or two working days of learning the need for the leave except in extraordinary circumstances. The notice will include the reason for the leave, the date the leave shall begin and the intended date of return.

When planning medical treatments, employees should consult with the Town when giving notice and make reasonable efforts to schedule the leave so as not to unduly disrupt the Town's operations.

MEDICAL CERTIFICATION:

Leave to care for an employee's seriously-ill family member, or leave due to a serious health condition that makes the employee unable to perform the functions of the employee's job, must be supported by certification by a health care provider.

Employees must provide the certification within fifteen calendar days. If the need for leave was not foreseeable, the employee must still provide the certification as soon as both possible and practical thereafter. Certification shall include:

1. Identification of the practitioner and the type of medical practice.
2. The date the serious health condition commenced and the probable duration of the condition.
3. Diagnosis of the serious health condition.
4. Statement of the regimen of treatment prescribed for the condition (including estimated number of visits, nature, frequency and duration of treatment, including referred or ordered treatment to other health care providers and whether inpatient hospitalization is required). For intermittent leave or leave on a reduced leave schedule, a statement of the medical necessity for such leave.
5. In instances of the employee's serious health condition:
 - a. statement that the employee is unable to perform work of any kind, or
 - b. statement that employee is unable to perform the essential functions of his/her position (as determined by the Town).
6. Instances of care for a family member:

- a. statement that the family member is in need of the employee's assistance for basic medical, hygiene, nutritional needs, safety or transportation, or
- b. statement that the employee's presence would be beneficial or desirable for the care of the family member.

Medical certification forms are available in the office of Human Resources. If the Town has reason to doubt the validity of a medical certification, the employee may be required to obtain a second opinion from a health care provider designated by the Town at the Town's expense. If the two opinions differ, the Town may require a third opinion, which will be final and binding, from a health care provider mutually agreed upon by the employee and the Town and at the Town's expense.

Re-certification by the health care provider is required every thirty days. Re-certification must include the same information contained in the initial certification.

Re-certification may also be required in the following instances:

- a. The employee requests an extension of leave;
- b. changed circumstances occur regarding the illness or injury;
- c. The Town's reception of information which casts doubts upon the continuing validity of the certification.

NOTICE OF INTENT TO RETURN TO WORK:

An employee will be required to report periodically to the Human Resources Department and their supervisor on his or her status and intent to return to work.

INTERMITTENT LEAVE/REDUCED SCHEDULE:

FMLA leave may be taken on an intermittent or reduced leave schedule. Employees requesting an intermittent or reduced leave schedule must make a reasonable effort to schedule treatment so as not to unduly disrupt the Town's operations and administration, especially when the leave is foreseeable. The Town may require a temporary transfer to an alternative position with equivalent pay and benefits, if the employee is qualified for the position, to better accommodate the reoccurring periods of leave.

Leave for the birth or placement of a child may not be taken on an intermittent or reduced leave schedule basis.

PAID LEAVE AND BENEFITS

In all circumstances, accrued vacation, personal and compensatory time must be used during qualified FMLA leave. In addition, sick leave must also be used to care for the employee's own serious health condition. Upon depletion of the available accrued paid leave, FMLA leave becomes unpaid leave. It is the total of this time, which will equal the twelve weeks of FMLA leave. During any portion of FMLA leave to which the accrued paid leave is applied, the employee will continue to accrue benefits and seniority. During any portion of FMLA leave, which is unpaid, the employee will not accrue benefits and seniority.

The Town will continue the contribution to the employee's group health plan during the FMLA leave unless the employee advised that he/she will not be returning to work. The employee will have his/her contribution deducted from the applied paid leave. Upon the depletion of said leave, and if the leave becomes unpaid, the employee must make arrangements to pay 102% of their health insurance premiums, unless the leave continues because of their own illness. These arrangements must be made in advance of the leave, especially if the leave is foreseeable.

If the employee's premium payment is more than 30 days late, his/her health coverage will be canceled. Employees experiencing severe financial hardship may petition the Town Manager for consideration of alternatives for payment of the employee premium. This may include but not be limited to: payment of employee health insurance premiums by the Town while on unpaid leave and subsequent double deductions of health insurance premiums upon the employee's return to work. This petition must be made within the thirty days noted previously. The Town Manager will make a recommendation to the Board of Selectmen or their designee for final determination.

The Town will recover from the employee premiums paid during any period of unpaid FMLA leave if the employee fails to return to work after the FMLA leave entitlement has expired, except in instances of continuation, reoccurrence, or onset of qualifying FMLA leave circumstances or other circumstances beyond the control of the employee.

When circumstances allow for the Town to recover health insurance premium payments it made from a non-returning employee, the Town may deduct the amount due from any sums owed to the employee. For example: vacation or final paycheck.

RESTORATION TO POSITION:

An eligible employee who takes FMLA leave is entitled to be restored to the same position that the employee held when the leave started, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment, provided the employee returns to work at the conclusion of leave of 12 work weeks or less.

Employees on FMLA leave due to their own serious health condition must submit certification from the health care provider that the employee is able to resume work, i.e. is fit for duty, before they can return to work.

DENIAL:

Conditions under which FMLA leave and/or reinstatement may be denied including (but not limited to):

1. ineligibility of employee,
2. unqualified for leave under the Family and Medical Leave Act,
3. employee fails to give timely advance notice for foreseeable leave (temporary denial up to thirty days after employee provides notice of need),
4. employee fails to provide in a timely manner, requested medical certification (temporary denial up to time of submittal),
5. employee fails to supply fitness-for-duty certificate (up to time of submittal),
6. if employee's job is eliminated during period of leave,
7. employee unequivocally advises Town of intent not to return to work,
8. fraudulent acquisition of FMLA leave, and
9. employment with another employer while on FMLA leave.

A-1 SMALL NECESSITIES LEAVE ("SNLA"):

All eligible employees are entitled to take up to a total of 24 hours leave during the 12-month period, as defined in the FMLA policy, to:

- (1) participate in school activities directly related to the educational advancement of a son or daughter of the employee, such as parent-teacher conferences or interviewing for a new school;
- (2) accompany the son or daughter of the employee to routine medical or dental appointments, such as check-ups or vaccinations; and
- (3) accompany an elderly relative of the employee to routine medical or dental appointments or appointments for other professional services related to the elder's care, such as interviewing at nursing or group homes.

"School" includes public and private elementary and secondary schools, Head Start programs, and children's day care facilities licensed under Massachusetts' law.

Eligible employees are individuals who have worked for the Town for at least twelve months and provided at least 1,250 hours of service during the twelve months before leave commences.

In all circumstances, accrued vacation and personal leave must be used for SNLA leave. Upon depletion of available accrued vacation and personal leave, SNLA becomes unpaid leave. Vacation and personal leave run concurrently with SNLA when the leave is for an SNLA a qualifying reason.

Eligible employees will provide written notice of their intent to use SNLA leave to the Town Manager seven days in advance when the leave is foreseeable. When unforeseen events occur that require SNLA leave the employee must provide as much notice as practicable.

All notifications, certifications and questions relating to this policy, must be submitted to the Human Resources Department.

A. **Extended Medical Leave:** A medical leave may be extended until the employees are physically able to return to work, up to a period of six months. The duration of the medical leave must be supported by the employees' doctor in a written statement directed to the Town.

B. **Paternal Leave:** A male or female will be granted a leave of up to eight weeks for the purpose of childbirth, or adopting a child under three years of age. Employees have to give notice of the date of their departure and their intent to return to work. The employee will return to his/her original position or a similar one. Leave under this provision runs concurrently with Family Medical Leave Policy.

C. **Personal Leave:** The Town may grant a leave of absence for compelling personal reasons provided adequate arrangement can be made for employee's responsibilities during the absence. Employees must have been employed over one year as a regular full-time employee or have equivalent part-time service. The leave may not exceed three months.

The employee must notify the department head far enough in advance to allow for the approval of Human Resources and to make adequate arrangements.

All accrued vacation time not used may not extend the period of such leave. All benefits will continue for the length of the personal leave to a maximum of three months. Total monthly group insurance premiums must be paid in advance by the employee.

D. Military Employees who held permanent positions prior to entering military service are entitled to reinstatement. Employees inducted into the Armed Forces will be expected to show a copy of their military orders to their department head who will make a copy of these orders and send them to Human Resources for the employee's file.

Employees must present a certificate showing satisfactory completion of service. Employees returning from military service will be restored to their former position or a position of like status and pay if such employees apply for reinstatement within 90 days from date of honorable discharge from military service.

Once employees are reinstated they are entitled to the service date they had when they entered military service plus whatever additional service time they would have accumulated had they remained at their job. If the rate of pay for the same position has been increased, they are entitled to the higher pay.

The leave of absence will terminate upon an employee's failure to apply for reinstatement within 90 days of honorable discharge.

Service time will continue to accrue for the duration of a military leave, but will not accrue beyond a maximum of 5 years.

While in the Armed Service, insurance coverage will be discontinued.

1. Reserve Obligation - Military Leave

The Town will grant a leave annually to permanent full-time employees who are ordered into military service for 15 days or less. This leave is in addition to the normal vacation to which they are entitled. The two-week military time will not be counted as vacation time unless requested by the employee. Reserve training will not be considered an interruption of Town Employment for purposes of computing service date.

Group insurance coverage will continue unchanged during this 15 day Reserve training period. If employees are called or volunteer for longer periods of active duty, all insurance benefits will cease as of the date they are placed on Military Leave.

Paternal Leave Policy (As outlined by the Massachusetts Paternal Leave Act PLA), MGL Ch. 149, Section 105D)

An employee who has completed the initial probationary period set by the terms of their employment or, if there is no such probationary period, has been employed by the same employer for at least three consecutive months as a full-time employee, is absent from such employment for a period not exceeding eight weeks for the purpose of giving birth or for adopting a child under the age of eighteen or for adopting a child under the age of twenty-three, if the child is mentally or physically disabled, said period to be hereinafter called paternal leave, and who shall give at least two weeks' notice to their employer of the anticipated date of departure and intention to return, shall be restored to their previous, or a similar, position with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of their leave. Said leave may be with or without pay at the discretion of the employer.

Such employer shall not be required to restore an employee on leave to their previous or a similar position, if other employees of equal length of service credit and status in the same or similar positions have been laid off due to economic conditions or other changes in operating conditions which have affected the employment of others during the period of such leave; provided, however, that such employee on leave shall retain any preferential consideration for another position to which they may be entitled as of the date of their leave.

Such leave shall not affect the employee's right to receive vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which said employee was eligible at the date of such leave, and any other advantages or rights of employment incident to their employment position; provided, however, that such leave shall not be included, when applicable, in the computation of such benefits, rights, and advantages; and provided, further, that the employer need not provide for the cost of any benefits, plans, or programs during the period of leave unless such employer so provides for all employees on leave of absence. Nothing in this section shall be construed to affect any bargaining agreement or company policy which provides for greater or additional benefits than those required under this section.

A notice of this provision shall be posted in every establishment.

For the purposes of this section, an "employer" shall be defined as in subsection 5 of Section One of M.G.L. Chapter One hundred and fifty-one B [MGL c.151B, §1 (5)].

An employee seeking leave must give two week's notice of the anticipated date of departure and intent to return. "Anticipated" date of departure does not mean "exact" date. Thus, for example, an employee who gives birth prior to the anticipated departure date is entitled to start the leave earlier. Likewise, an employee may desire to start the leave later or return from leave earlier than anticipated. It is expected that employers and employees will communicate in good faith with regard to making arrangements for such leave, taking into account the uncertainty inherent in delivery and adoption dates and the needs of the employer to plan in advance for an employee's absence. The MCAD enforces the PLA. An employee, to initiate a formal action, must file a complaint with the MCAD. The complaint must be filed within 300 days of the alleged violation of the PLA, subject only to very limited exceptions. A violation of the PLA constitutes a violation of M.G.L. c. 151B, §4(11A). An aggrieved employee is therefore entitled to the same remedies under the PLA as are available pursuant to M.G.L. c. 151B.

Appendix B
Public Employee Committee Agreement

**MEMORANDUM OF
AGREEMENT**

WHEREAS, the Board of Selectmen of the Town of Duxbury voted on December 19, 2011, to adopt M.G.L. c. 32B, §§ 21-23 for the purpose of engaging in the process to change health insurance benefits; and

WHEREAS, the Town of Duxbury (hereinafter referred to as the "Town"), and the duly-formed Public Employee Committee (hereinafter referred to as the "PEC") have discussed said changes;

NOW, THEREFORE, the Town and the PEC agree as follows:

Effective Date of Agreement

1. The Agreement shall take effect on the date the Town and the PEC execute the Agreement.

*Health Insurance Benefit
Changes*

2. Effective September 1, 2012, the Town shall offer subscribers the "Duxbury Plan" version of the HMO and PPO health insurance plans. The MEDEX health insurance plan will continue to be offered with the current level of benefits until June 30, 2014. Members of the Duxbury Police Union and Duxbury Commanders Association will continue to be offered the current health insurance plans until June 30, 2013. Effective July 1, 2013, the Town will no longer offer members of the Duxbury Police Union and Duxbury Commanders Association the current health insurance plans, and instead the "Duxbury Plan" version of the HMO and PPO health insurance plans will be offered.
3. Effective September 1, 2012, the Town will no longer offer the Master Health Plus health insurance plan.
4. Effective July 1, 2014, the Town shall offer subscribers the Benchmark version (i.e., the GIC-like plans) of the HMO, PPO, and MEDEX health insurance plans. Effective July 1, 2014, the Town will no longer offer the "Duxbury Plan" version of the health insurance plans.
5. For purposes of this Agreement, the term "subscribers" shall mean all employees, retirees, surviving spouses and dependents currently eligible for and receiving health insurance through the Town of Duxbury, and any employees, retirees, surviving spouses and dependents who become eligible in the future.
6. The PEC understands and agrees that the subscribers will not receive any mitigation monies under this agreement.
7. The Town shall provide notice to the Secretary of Administration and Finance by

sending a copy of this Agreement within three (3) business days of its ratification by the Town and PEC. The health insurance review panel will be notified that there is no need for its services.

8. If this Agreement is not ratified by the PEC prior to the thirty (30) day negotiation period expiration (i.e., March 31, 2012), then this Agreement is null and void and the Town shall provide its mitigation proposal and health insurance benefit changes to the health insurance review panel.
9. The Town agrees that it will not implement any additional health insurance benefit changes pursuant to M.G.L. c. 32B, §§ 21-23 prior to July 1, 2015, unless otherwise required by State or Federal law.

Change in Health Insurance Plan Offerings

10. In the event that Blue Cross/Blue Shield ceases to offer any of the plans listed above, this Agreement shall become null and void. In this circumstance, the Town can implement health insurance benefit changes pursuant to M.G.L. c. 32B, §§ 21-23.

Effect of Agreement

11. This Agreement shall be binding on all subscribers and shall supersede any conflicting provisions of any Town policies or any collective bargaining agreements between the Town and any unions and/or associations representing Town employees.

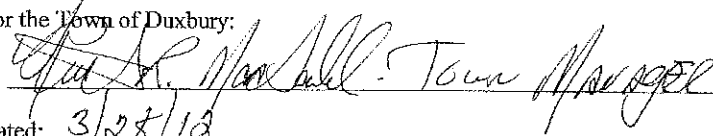
Savings Clause

12. If any provision or portion of the Agreement is found to be unenforceable or unlawful, the remaining provisions or portions shall remain binding.

Scope and Modification

13. This written Agreement shall constitute the whole of the Agreement between the Town and the PEC. The Agreement may be modified only through a mutual written agreement between Town and the PEC.

For the Town of Duxbury:



Dated: 3/28/12

For the Public Employee Committee:

Randolph (school custodian union)

Dated: 3/28/12

John Bauer FD RETIREES

Dated: 3/29/12

Richard Baymonden MASS Retirement Assoc.

Dated: 3/28/12

Matthew Lynn aka (DTA)

Dated: 3/28/12

John M L2167 DUXBURY FIREFIGHTERS

Dated: 3/28/12

[Signature] Duxbury Police Union

Dated: 3/28/12

[Signature] Duxbury DPW

Dated: 3/28/12

[Signature] SEIU

Dated: 3/28/12

Quam Hart Duxbury Free Library

Dated: 3/28/12

Lynn Bonnell Police Commanders

Dated: 3/28/12

William D [Signature] Police Dispatch Association

3/28/12