

# FAMILY AND MEDICAL LEAVE ACT (FMLA)

## A. Purpose

Up to twelve (12) weeks of unpaid, job protected leave will be provided each fiscal year to eligible employees to care for a newborn or newly placed adopted or foster child, to care for a child, spouse or parent with a serious health condition, or because of the employee's own serious health condition. The terms in this policy will be defined in the same way as those terms are defined in the Family and Medical Leave Act of 1993 and its applicable rules and regulations. A copy of the law and the rules and regulations is available to employees who request a copy from the Human Resources Department.

The federal Family and Medical Leave Act (FMLA) also entitles eligible employees to take leave for a covered member's service in the Armed Forces (including the National Guard or Reserves). FMLA leave for this purpose is called "military caregiver leave" and can be utilized for up to twenty-four (24) weeks. This policy provides notice of employee rights to such leave.

## B. Applicability

This policy applies to all county employees who have been employed for at least 12 months and who have worked at least 1250 hours the previous 12 months prior to the date the leave is to begin.

## C. General

Eligible employees may receive up to 12 weeks of unpaid, job protected leave each year for the following reasons:

1. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.
2. Because of the placement of a son or daughter with the employee for adoption or foster care;
3. In order to care for the spouse, son, daughter or parent of the employee with a serious health condition;
4. Because of a serious health condition that makes the employee unable to perform his or her job functions.
5. Military caregiver leaves when absence is due to a "Qualifying Exigency":

An eligible employee may take up to twenty-six (26) workweeks of job protected leave during each year period to care for an injured or ill servicemember. Leave to care for an injured or ill servicemember, when combined with other FMLA qualifying leave may not exceed twenty-six (26) weeks in a single twelve (12) month period.

The term "year" is determined as a twelve-month period based on the County's fiscal year.

Entitlement to leave for a birth and to care for a son or daughter, for placement of a son or daughter for foster care, or adoption expires at the end of the 12 month period beginning on the date of such birth or placement. Both parents are entitled to FMLA leave to be with the healthy newborn child (bonding time) during the twelve-month period beginning on the date of birth. Maximum leave for bonding time is 12 weeks and intermittent leave will not be granted for bonding time.

Where both spouses are employed by the County, the amount of leave provided for care of a newborn or newly placed adopted or foster child (bonding time), or to care for a parent with a serious health condition is limited to a total of 12 weeks for both spouses. FMLA leave may not be used by the employee to care for a parent-in-law with a serious health condition. Where leave is taken to care for a spouse or child with a serious health condition and both spouses are employed by the County, each may take 12 weeks of leave.

**D. Paid/Unpaid Leave**

Eligible employees shall utilize available accrued paid leave if County policies permit their use for any part of the 12-week period. Consistent with County policies the following shall apply:

- Use of FMLA for the employee's own serious health condition shall utilize sick leave until such leave is exhausted (employee may choose to use Personal time, Vacation time, or Compensatory time for purpose of sick leave). If sick leave is exhausted employee shall be required to use Personal time, compensatory time and then Vacation time before leave status is considered unpaid. Pregnancy and recovery from childbirth are considered serious health conditions. Bonding time is not considered a serious health condition; nevertheless, the county will allow sick leave use for up to two (2) weeks (80 Hours) for bonding time.
- Use of FMLA for an employee to care for a newborn, newly placed adopted or foster child (bonding time) shall utilize any accrued but unused Personal time, Compensatory time, and then Vacation time before leave status is considered unpaid. To care for a child, spouse, or parent with a serious health condition an employee shall utilize any accrued but unused family Sick leave (maximum six days per fiscal year), Personal time, Compensatory time, and then Vacation time (if any accruals are available) before leave status is considered unpaid.

For use of continuous FMLA, of four (4) weeks or longer an employee may elect to withhold one week (40) hours of vacation time from use prior to going on unpaid leave. The County is not by this policy authorizing the use of paid leave in any situation not otherwise authorized by its current policies, nor is it abrogating the requirement that paid leave be exhausted for receipt of any benefits authorized by its current policies.

All requests for leave of any type shall state on the leave form submitted to the department whether the leave is for Family and Medical Leave Act purposes.

**E. Intermittent Leave**

Leave for childbirth or adoption shall not be taken intermittently or on a reduced leave schedule. However, leave taken to care for a spouse, child, parent or for the employee's own serious health condition may be taken intermittently or on a reduced schedule, if it is medically necessary. Certification of need shall be provided. The taking of leave intermittently or on a reduced leave schedule does not reduce the total amount of leave for which the employee is entitled.

**F. Notice Requirement**

When leave for an expected birth or adoption or foster placement is foreseeable, employees shall provide the County with at least 30 days notice of their intention to take leave, or as much notice as is practicable under the circumstances.

When leave for planned medical treatment is foreseeable, employees shall provide the County with at least 30 days notice of their intention to take leave, or as much notice as is practicable under the circumstances. If an employee requests intermittent leave or leave on a reduced leave schedule, the County may require the employee to transfer temporarily to an alternate position with equivalent pay and benefits, which better accommodates the leave schedule.

Employees shall make a reasonable effort to schedule treatment so as not to unduly disrupt the operation of the County.

**G. Certification**

Each employee shall provide with his or her leave application, certification issued by the health care provider of the eligible employee. Should the leave request be for the care of a spouse, son, daughter or parent of the employee, then a certification issued by their respective health care provider should accompany the leave application. The certification will be considered sufficient if it includes the date on which the illness commenced, the probable duration of the illness, the appropriate medical facts, and where applicable, a statement that the employee is (1) unable to perform his/her job, or (2) is needed to care for his/her child, spouse, or parent. In addition, for intermittent leave requests, the health care provider must certify that such leave is medically necessary, and state the expected duration and expected schedule of the intermittent leave or reduced leave schedule.

In any case in which the County has reason to doubt the validity of the certification for leave to care for a child, spouse, or parent with a serious health condition or because of the employee's own serious health condition, it may require, at its own expense, that the employee obtain the opinion of a second health care provider designated or approved by the County. Where the second opinion differs from the opinion provided in the original certification, the County may require that the employee obtain the opinion of a third health care provider approved jointly by the County and the employee. The opinion of the third health care provider shall be final and binding on both the employer and the County.

**H. Employment Protection**

Eligible employees who take leave under the Family and Medical Leave Act are entitled to return to the same position they held before taking leave, or to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

**I. Benefits Protection**

All benefits which eligible employees had accrued prior to taking leave shall be retained. However, employees restored to their former or equivalent positions shall not be entitled to the accrual of seniority or employment benefits during any period of leave except as authorized by County policy.

The County shall, during any period that an eligible employee takes leave, maintain his/her coverage under its group health, dental, and life insurance plan for the duration of such leave at the level and under conditions of coverage which would have been provided if the employee had continued in employment for the duration of such leave. However, if the employee fails to return from leave within the time required under the Act, the employer may recover any group health plan premiums paid for maintaining that coverage while the employee was on leave. If, however, the employee fails to return from leave due to the continuation, recurrence or onset of a serious health condition, covered under the Act or due to circumstances beyond the employee's control, such premiums may not be recovered.

**J. Military Caregiver FMLA**

1. Military Caregiver FMLA provides eligible employee's unpaid leave for any one, or for a combination of the following reasons:
  - A "qualifying exigency" arising out of a covered family member's active duty or call to active duty to a foreign country (areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including deployment to international waters) in the Armed Forces (including the National Guard or Reserves) of

the United States in support of a contingency plan: short notice (seven days or less) deployment, making alternative child/parent care arrangements for a child/parent of the deployed military member, attending certain military ceremonies and briefings, school activities (enroll or transfer to new school/ day care, counseling, rest and recuperation (time with a servicemember who is on short-term leave during deployment) or making financial or legal arrangements to address the military member's absence; and/or

- To care for a covered family member or next of kin who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces of the United States provided that such injury or illness may render the family member medically unfit to perform duties of the member's office, grade, rank, or rating.
2. The "next-of-kin" of a current servicemember is the nearest blood relative, other than the current servicemember's spouse, parent, son or daughter in the following order of priority: 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. The servicemember may designate in writing another blood relative as his or her nearest blood relative of military caregiver leave under the FMLA. Other individuals such as a mother-in-law, same sex spouse, or domestic partner are not included in the definition of "next-of-kin".
  3. Servicemember FMLA runs concurrent with other leave entitlements provided under federal, state, and local law.
  4. Use of FMLA for an employee who is an immediate family member (spouse, child, or parent) of military personnel and/or reservists who have a "qualifying exigency" shall utilize personal time and then vacation time (if any accruals are available) before leave status is considered unpaid.
  5. Use of FMLA for an employee who is an immediate family member (spouse, child, or parent) who is a member of the armed forces of the U.S. and who have been injured or wounded in the line of duty shall utilize any accrued but unused family sick leave (maximum six days per fiscal year), personal time and then vacation time (if any accruals are available) before leave status is considered unpaid.
  6. To use FMLA, the employee must be the spouse, son, daughter, parent, or next of kin of the covered servicemember.
  7. A covered servicemember is either:
    - a **current** member of the Armed Forces (including the National Guard or Reserves who has been injured or wounded in the line of duty, receiving medical treatment, recuperation, or therapy or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness (A serious injury or illness also includes injuries or illnesses that existed before the servicemember's active duty and that were aggravated by service in the line of duty on active duty) or
    - a **veteran** of the Armed Forces (including the National Guard or Reserves) discharged within the five-year period before the family member first takes military caregiver leave to care for the veteran and who is undergoing medical treatment, recuperation, or therapy for a qualifying serious injury or illness. A veteran who was dishonorably discharged does not meet the FMLA definition of a covered servicemember.

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