



Family and Medical Leave

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1.0 POLICY

In accordance with the Family and Medical Leave Act (FMLA) of 1993, the County of Lee provides employees who meet the requirements of the Family Medical Leave Act a total of twelve (12) weeks of paid and/or leave without pay in a year for a family or medical reason as specified in the Act. The Family Medical Leave Act was amended January 16, 2009 to require employers to grant up to twelve weeks of leave for certain qualifying exigencies to employees whose *spouse, child of any age or parent* is a military service member under a call or order to federal active duty in support of a contingency operation. Eligible employees may take up to 26 weeks of leave within a twelve-month period to care for a family member who has been injured or becomes ill while serving in the armed forces, including the National Guard or Reserves. The National Defense Authorization Act was signed into law on October 28, 2009, expanding the military family leave provisions of FMLA. The amendments mandate exigency leave for family members of all covered active duty members and expand the military caregiver provision to family members of certain former service members. The Family Medical Leave Act was amended February 25, 2015 to require employers to include all individuals in legal marriages, regardless of where they live and to change the definition of husband and wife as defined or recognized under state law for purposes of marriage in the state where the employees resides, including "common law" marriage and same-sex marriage.

2.0 DEFINITIONS

2.1 Child: A son or daughter who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability who is a/an:

- A.** Biological child;
- B.** Adopted child;
- C.** Foster child - a child for whom the employee performs the duties of a parent as if it were the employee's child;
- D.** Step-child - a child of the employee's spouse from a former marriage;
- E.** Legal ward - a minor child placed by the court under the care of a guardian;

- F. Child of an employee standing in loco parentis. The FMLA regulations define in loco parentis as including those with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may, nonetheless, stand in loco parentis to the child and be entitled to FMLA leave. Similarly, an employee may take leave to care for someone who, although having no legal or biological relationship to the employee when the employee was a child, stood in loco parentis to the employee when the employee was a child, even if they have no legal or biological relationship.

2.2 Contingency Operation: Military operation that is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or results in the call or order to, or retention on, active duty of members of the uniformed services.

2.3 Covered Active Duty:

- A. In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the armed forces to a foreign country.
- B. In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the armed forces to a foreign country under a call or order to active duty under a provision of law referred to in Section 101(a)(13)(B) of Title 10, United States Code.

2.4 Covered Service Member:

- A. A member of the 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.
- B. A veteran who is undergoing medical treatment, recuperation or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

2.5 Eligible Employees: Employees who have been employed with Lee County for at least twelve (12) months and who have worked at least 1,250 hours during the previous twelve-month period are entitled to FMLA (paid or unpaid) during any “rolling” twelve-month period measured backwards from the date any employee used as FMLA for one or more of the following reasons:

- A. For the birth or placement for adoption or foster care of a child and to care for the child provided the leave is taken within a 12-month period following such event. This applies to both parents. When both parents are employed by the County, they are limited to a total of twelve weeks of leave per twelve months.
- B. For the employee to care for the employee's child, spouse, or parent where that child, spouse, or parent has a serious health condition; or
- C. Because the employee has a serious health condition that makes the employee unable to perform the functions of the employee's position.
- D. For employees whose spouse, child of any age or parent is a military service member of the Reserves, National Guard or of a regular component of the Armed Forces when the covered military member is on covered **Federal** active duty or called to covered **Federal** active duty in support of a contingency operation.
- E. For employees to care for a family member who is a **current** member of the armed forces and who has been injured or become ill in the line of duty.

Leave without pay beyond the FMLA period for eligible employees and for employees not covered under FMLA will be administered under Section F-8 of this resolution entitled "Leave Without Pay (Leave not covered under Family Medical Leave Act)". Under that provision, employees must pay for health benefits coverage.

- 2.6 **Next of Kin (as defined for military caregiver leave):** Blood relative in the following order: spouse, parents, brothers, sisters, grandparents, aunts, uncles and first cousins.
- 2.7 **Parent:** Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law."
- 2.8 **Health Care Provider:** Licensed M.D.s, Licensed O.D.s, Podiatrists, Clinical Psychologists, Chiropractors (in certain cases), Nurse-midwives, Official Christian Science Practitioners, Dentists, Optometrists, Nurse Practitioners or Clinical Social Workers.
- 2.9 **Serious Health Condition:** An illness, injury, impairment or physical or mental condition that involves any period of incapacity; any period of incapacity requiring an absence from work of more than three full consecutive days that also involves continuing treatment by a health care provider:
 - Continuing treatment means one in-person visit to a health care provider within the first seven (7) days of incapacity and either a second visit within the

first thirty days; or a regimen of continuing treatment under the supervision of a health care provider

- Any period of incapacity or treatment connect with inpatient care
- Any period of incapacity due to pregnancy
- Any period of incapacity or treatment due to a chronic health condition such as asthma, diabetes, epilepsy
- Any period of incapacity that is long-term or permanent due to a condition for which treatment may not be effective (ex. Cancer, AIDS)
- Any absence to receive multiple treatments for a condition that would likely result in an incapacity for more that three (3) consecutive days if left untreated
- In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or 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 that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.
- In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on an active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

2.10 Spouse: Spouse means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including "common law" marriage and same-sex marriage.

2.11 Workweek: The number of hours an employee is regularly scheduled to work each week.

3.0 PROCEDURE / RULE

3.1 Leave Charges:

- A.** For the birth of a child, the employee must use sick time, and then vacation time, and then go on leave without pay. An employee may request to use accrued compensatory time at any time during FMLA leave. This applies to both parents.
- B.** For the adoption of a child, the employee must use sick time, and then vacation time, and then go on leave without pay. An employee may request to use accrued compensatory time at any time during FMLA leave.
- C.** For the illness of an employee's child, spouse, or parent, the employee must use sick time, and then vacation time, and then go on leave without pay. An employee may request to use accrued compensatory time at any time during FMLA leave.
- D.** For Qualifying Exigency, the employee must use sick time, and then available vacation time, and then go on leave without pay. An employee may request to use accrued compensatory time at any time during FMLA leave.
- E.** For Military Caregiver Leave, the employee must use sick time, and then available vacation time, and then go on leave without pay. An employee may request to use accrued compensatory time at any time during FMLA leave.
- F.** For the employee's illness, the employee must use sick time, and vacation time, and then go on leave without pay. An employee may request to use accrued compensatory time at any time during FMLA leave.
- G.** Periods of paid time and periods of leave without pay will count toward the twelve (12) work weeks to which the employee is entitled.
- H.** FMLA is not available for colds, stomach viruses, the flu or similar conditions, unless they require inpatient care or continuing treatment by a healthcare provider.

3.2 Intermittent Leave or Reduced Work Schedule:

- A.** Pursuant to this policy, the employee may not take leave intermittently or on a reduced work schedule for foster care or birth related childcare or for adoption except upon prior approval of the County Manager's office.

- B. When medically necessary, the employee may take leave intermittently or on a reduced schedule to care for the employee's child, spouse, or parent who has a serious health condition, because the employee has a serious health condition or to care for a covered service member with a serious injury or illness. If such leave is foreseeable, based upon planned medical treatment, the Department Director may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and that better accommodates recurring periods of leave.
- C. When an employee is on a reduced work schedule, the time not worked is counted against the total twelve (12) workweeks.
- D. When an employee is on a reduced work schedule and is unable to work overtime, the overtime not worked counts against FMLA entitlement.
- E. Qualifying exigency leave may be taken on an intermittent or reduced leave schedule basis.
- F. If an employee needs leave intermittently or a reduced schedule for planned medical treatment, the employee must consult with the employer before scheduling the treatment in order to work out a schedule that meets the needs of both the employee and the County, subject to the approval of the health care provider.

3.3 Employee Responsibility:

- A. The employee must provide notice of FMLA to the Human Resources Department and the Department Director using the following guidelines:
 - 1. Birth or adoption - the employee shall give the County no less than thirty (30) days notice, in writing, of the intention to take leave, subject to the actual date of the birth or adoption. If the date of the birth or adoption requires leave to begin in less than thirty (30) days, the employee shall provide such notice as is practicable;
 - 2. Planned medical treatment - when the necessity for leave to care for the employee's child, spouse, or parent, or because the employee has a serious health condition, or the planned medical treatment of a covered service member, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt operations, subject to the approval of the employee's health care provider or the health care provider of the employee's child, spouse, or parent. The employee must also give thirty (30) days notice if practicable of the intention to take leave.

3. An employee shall provide at least verbal notice sufficient to make the employer aware that the employee's needs are FMLA qualifying, and the anticipated timing and duration of the leave. Depending on the situation, such information may include that a condition renders the employee unable to perform the functions of the job; that the employee or employee's covered family member is under the continuing care of a health care provider. If the leave is due to a qualifying exigency, that a covered military member is on active duty or call to active duty status, and that the requested leave is for one of the reasons listed under 825.126(a).
4. It is the sole responsibility of the employee to ensure that all documents and certifications are completed and submitted to Human Resources in a timely manner and by due date. The employee is solely responsible for completing or requesting information and any other correspondence from his/her healthcare provider.
5. Employees on FMLA leave may not be employed in any capacity during this leave time. Violation of this policy may result in immediate termination of both FMLA leave and employment.
6. If an employee is engaging in an activity that would appear impossible or prohibited by the health care provider while on FMLA leave, the County may terminate the employee's FMLA leave and/or the employee.

B. If an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, the County may delay continuation of FMLA leave until the employee submits a certification. If the employee fails to produce the certification, the time will not be counted toward FMLA leave.

C. Upon returning to work from FMLA leave if an employee fails to provide a return to work certification, the County may delay restoration to work until the employee submits the certification.

D. If the employee will not return to work after the period of leave, the County should be notified in writing immediately. Failure to report at the expiration of the leave, unless an extension has been requested, will be considered as a resignation.

3.4 Certification: The County must request certification in writing within **five days** of the employee's request for FMLA leave if the need for leave has been foreseeable, or within **five days** after the leave has begun, where the need for leave has not been foreseeable.

- A. The County must allow the employee fifteen (15) calendar days to obtain the certification. If the employee does not return the certification within the 15-day window, the employee loses his/her right to FMLA leave and to return to the same or a substantially equivalent job. It would not be a violation of the FMLA to either deny FMLA leave or to fire an employee who has not returned a medical certification after fifteen (15) days.
- B. The County is entitled to a complete and sufficient certification. All of the applicable entries must be filled out. The information must not be vague, ambiguous or non-responsive.
- C. If the certification is incomplete or insufficient, the County must advise the employee in writing what additional information must be provided. The employee has seven (7) calendar days to provide the required information. FMLA will be denied to employees who fail to return a complete and sufficient certification after being given seven (7) days to resubmit.
- D. Where the County has reason to doubt the validity of the certification, the County may require the employee to get the opinion of a second provider designated or approved by the County at the County's costs. Where the second opinion differs from the opinion in the original certification provided, the employee must obtain a certification of a third provider designated or approved jointly by the County and the employee. The third opinion is final and is binding on the County and the employee.
- E. If the employee submits a complete and sufficient certification signed by the healthcare provider, the County may not request additional information from the healthcare provider (825.307). However, the County may contact the health care provider for purposes of clarification and authentication of the medical certification or recertification after the County has given the employee an opportunity to cure any deficiencies as set forth in §825.305 (c). The County Manager must approve the contact of any health care provider.
- F. The County can ask for recertification (normally no more frequently than every 30 days). Recertification may only be required when employees are taking leave for their own serious health condition.

3.5 Employment and Benefits Protection:

- A. **Reinstatement:** The employee shall be reinstated to the same position held when the leave began or one of like pay grade, pay, benefits, and other conditions of employment. The County may require the employee to report at reasonable intervals to the employer on the employee's status and intention to

return to work. The County will require that an employee who has been on FMLA leave because of the employee's own serious health condition return a fitness-for-duty certification before returning to work. The County will require that a health care provider certify the employee's ability to perform his or her essential job duties.

The County is not required to continue FMLA leave or to return a person to work if the employee would have been terminated had they continued to work (Example: employee's position eliminated as part of a restructuring or a reduction in force action).

- B. Benefits:** The employee shall be reinstated without loss of benefits accrued when the leave began. Sick and vacation paid time will continue to accrue during any period of paid leave; however, no sick and vacation paid time will be accrued during any period of leave without pay.

- C. Health Benefits:** The County shall maintain coverage for the employee under the county's group health plan for the duration of leave up to twelve (12) weeks at the level and under the conditions coverage would have been provided if the employee had continued employment. The county may recover the premiums if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control. Family coverage normally paid by the employee will continue to be the responsibility of the employee during the period of paid or unpaid leave.

3.6 Interference with Rights:

- A. Actions Prohibited:** It is unlawful to interfere with, restrain, or deny any right provided by this policy or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this policy.

4.0 APPENDIX / APPENDICES

None.