

28 Family and Medical Leave Act

FMLA is intended to allow employees to balance their work and family life by taking reasonable unpaid leave for medical reasons, for the birth or adoption of a child, for the care of a child, spouse, or parent who has a serious health condition. The Act is intended to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity.

28.1 Basic Leave Entitlement

FMLA requires the county to provide up to 12 weeks of unpaid, job-protected leave (during a single 12 month period) to eligible employees for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health conditions that makes the employee unable to perform the employee's job.

A 12 month period is measured forward from the date of an employee's first FMLA leave.

28.2 Benefits and Protections

During FMLA leave, the County must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, employees will be restored to their original or equivalent positions with equivalent pay, benefits and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

28.3 Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least one year and 1,250 hours over the previous 12 months.

28.4 Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

28.5 Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the County's operations. Leave due to qualifying required immediate aid may also be taken on an intermittent basis.

28.6 Substitution of Paid Leave for Unpaid Leave

You will be required to use your available paid, sick, vacation, or other leave during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement. Note that the county recognized holidays will not count as FMLA leave time.

28.7 Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the County if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

28.8 **Employer Responsibilities**

The County must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employee's rights and responsibilities. If they are not eligible, the county must provide a reason for the ineligibility.

The County must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the County must notify the employee.

28.9 **Military Family Leave Entitlements**

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying situations. Qualifying situations may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12 month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

28.10 **Status of Additional Benefits during FMLA Leave**

If the employee contributes to other benefit plans, the employer will continue making payroll deductions while the employee is on paid FMLA leave. While on unpaid FMLA leave, the employee may (to be determined by the benefits provider) elect to continue these benefits through personal payment. If approved, the payment must be received by the Deputy Clerk by the first (1st) day of each month for that month's corresponding coverage. If the payment is more than thirty (30) days late, the employee's additional benefits may be dropped for the duration of the leave. An employee returning from FMLA may be able to reinstate his or her benefits potentially lost during his or her leave. Eligibility may be determined by the employer and the benefits providers (i.e., insurance companies).

28.11 **Procedure for Requesting FMLA Leave**

All employees requesting leave under this policy must request leave in writing. Employees must complete the County's Leave of Absence Application form, which may be obtained from the Human Resource Manager, which shall include an explanation of the reason(s) for the needed leave and the expected length of leave.

28.12 FMLA Certification of a Serious Health Condition

The County may ask for certification of the eligibility for FMLA covered leave. The employee shall obtain the county's Certification of Health Care Provider form from the Human Resource Manager. The employee shall respond to such a request with fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in denial of FMLA covered leave.

28.13 Employee Status after FMLA Leave

Employees returning to work following FMLA leave are required to provide the Human Resource Manager with a physician's release allowing the employee to return to duty prior to reporting for duty. Employees who fail to provide the release to return to duty may not be permitted to resume work until that document is provided. This is not required for all types of intermittent FMLA leave.

If an employee becomes ill or is injured off the job and seeks medical treatment or obtains physician imposed restrictions, the employee must report this to the Human Resource Manager prior to returning to work. The employee shall be required to provide a physician's statement detailing the employee's restrictions, if any, and may be asked to complete applicable forms.

When an employee returns from Family and Medical Leave, the county will make every attempt to return the employee to the same position or a position with equivalent status, pay, benefits and other employment terms and conditions.

This policy is intended to be consistent with the most recent version of FMLA. In the event of any inconsistency between this policy and the statute, the statute shall control.

Employees with any questions regarding their eligibility for FMLA leave are strongly encouraged to consult with the Human Resource Manager.