

7.03 FAMILY AND MEDICAL LEAVE ACT (FMLA)

A. Policy Statement

All departments under the Commissioners' hiring authority are required to post notices by the U.S. Department of Labor (DOL) on [Employee Rights and Responsibilities under the Family and Medical Act](#) in employee common areas, such as break rooms. Employees should inquire with management where these are posted in their respective department.

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.

B. General Provisions

Under this policy, the Commissioners will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy. The benefit year may be the calendar year, or a rolling twelve (12) month period, as determined by departmental management. The Board of Commissioners recommend management adopt a rolling twelve (12) month period.

C. Eligibility

To qualify to take family or medical leave under this policy, the employee must meet the following conditions:

1. The employee must have worked for the County for twelve (12) months or fifty-two (52) weeks. The twelve (12) months or fifty-two (52) weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven (7) years. Separate periods of employment will be counted if the break in service exceeds seven (7) years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
2. The employee must have worked at least 1,250 hours during the twelve (12)-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave shall not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

D. Types of Leave Covered

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

1. The birth of a child and in order to care for that child.
2. The placement of a child for adoption or foster care and to care for a newly placed child.
3. To care for a spouse, child or parent with a serious health condition (Under the FMLA, a "spouse" means a husband or wife as defined under the law in the state where the



- employee resides).
4. The serious health condition of the employee that makes the employee unable to perform the functions of the employee's position.
 5. Covered Active Duty—Qualifying exigency leave for families of members of the National Guard or Reserves, or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.
 - a. An employee whose spouse, son, daughter or parent has been notified of an impending call or order to covered active military duty, or who is already on covered active duty, may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: a) short-notice deployment, b) military events and activities, c) child care and school activities, d) financial and legal arrangements, e) counseling, f) rest and recuperation, g) post-deployment activities, and h) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.
 6. Military caregiver leave (also known as Covered Service Member Leave) to care for an injured or ill service member or veteran. An employee whose son, daughter, parent or next of kin is a covered service member may take up to 26 weeks in a single 12-month period to care for that service member. *Next of kin* is defined as the closest blood relative of the injured or recovering service member.

E. Amount of Leave

An eligible employee may take up to twelve (12) weeks for the first six (6) FMLA circumstances above (under heading "Type of Leave Covered") under this policy during any twelve (12) month period. The County will measure the twelve (12) month period as a rolling twelve (12) month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the County will compute the amount of leave the employee has taken under this policy in the last twelve (12) months and subtract it from the twelve (12) weeks of available leave, and the balance remaining is the amount of time the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA military caregiver leave circumstance above during a single twelve (12) month period. For this military caregiver leave, the County will measure the twelve (12) month period as a rolling twelve (12) month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If a husband and wife both work for the County and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for the County and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

F. Employee Status and Benefits During and After Leave

1. During leave the County will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. If the employee exhausts all available leave, the employee will be responsible for



paying their contribution of the monthly premium.

2. After leave, an employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider.

G. Use of Paid and Unpaid Leave

All paid vacation and sick leave, as applicable, shall run concurrent with FMLA leave. Leave for the birth of a child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA.

H. Intermittent Leave

The employee may take FMLA leave in twelve (12) consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year, when recommended by the health care provider). In all cases, the leave may not exceed a total of twelve (12) workweeks (or 26 workweeks to care for an injured or ill service member over a twelve (12) month period).

I. Required Certification

The County will require certification from the health care provider for:

1. employee's serious health condition;
2. employee's family member's serious health condition;
3. qualifying exigency for Military Family Leave; and
4. serious injury or illness of covered service member for Military Family Leave.

The employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of leave or denial in continuation of leave.

J. Recertification

The County may request recertification for the serious health condition of the employee or the employee's family member when circumstances have changed significantly, or if the County receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the County may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence.

K. Procedure for Requesting FMLA Leave and Designation of Leave

All employees requesting FMLA leave must provide management with verbal or written notice of the need for the leave. Within five (5) business days after the employee has provided this notice, management will provide the employee with the Department of Labor (DOL) [Notice of Eligibility and Rights and Responsibilities](#), accepting or denying the request.

When the need for the leave is foreseeable, the employee must provide the County with at least thirty (30) days' notice. When an employee becomes aware of a need for FMLA leave less than thirty (30) days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the County's usual and customary notice and procedural requirements for requesting leave.



L. Intent to Return to Work from FMLA Leave and Job Restoration

The County may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

Upon return from leave, an employee will be restored to his or her job, or to an equivalent job with equivalent pay, benefits and other employment terms and conditions.

