

**COUNTY OF ORANGE, VIRGINIA
PERSONNEL POLICIES MANUAL**

FAMILY AND MEDICAL LEAVE

POLICY NO.: 5.3

EFFECTIVE: 10/1/96

REVISED: 4/23/19

OVERVIEW: It is the County's objective to comply with the Family and Medical Leave Act (FMLA) of 1993, as amended. Under the FMLA, the County must provide eligible employees with unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave, as mandated in the FMLA.

SCOPE: This policy applies to all employees who have been employed by the County for at least 12 months (consecutive or non-consecutive in the past 7 years) and who have worked at least 1,250 hours in the previous 12 months.

DEFINITIONS:

1. Serious Health Condition: Any illness, injury, impairment, or physical or mental condition that involves or results in: 1) an overnight stay in a hospital, hospice, or residential medical care facility; 2) a period of incapacity which would result in an incapacity of three (3) consecutive calendar days in the absence of treatment; 3) any period of incapacity or treatment due to a chronic serious health condition requiring periodic visits to a healthcare provider, recurring over an extended period of time, or causing episodic absences; or 4) pregnancy or prenatal care.
2. Covered Active Duty: In the case of a member of a regular component of the Armed Forces, covered active duty means duty during the deployment of the member of the Armed Forces to a foreign country. In the case of a member of a reserve component of the Armed Forces, covered active duty means duty during the deployment of the member of the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in §101(a)(13)(B) of Title 10 of the United States Code.
3. Next of Kin: With regard to an individual, the nearest blood relative of that individual.

PROVISIONS:

A. Eligibility

Eligible employees are entitled to:

Twelve (12) workweeks in a rolling twelve-month period for:

- the birth of a child and to care for the newborn child within one year of birth;
- the placement of a child with the employee for adoption or foster care and to care for the newly-placed child within one year of placement;
- the care of the employee's spouse, child, or parent who has a serious health condition;
- a serious health condition that makes the employee unable to perform the essential functions of his job;
- any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a covered military member on "covered active duty."

-or-

Twenty-six (26) workweeks in a rolling twelve-month period for:

- the care of a covered servicemember with a serious injury or illness, if the eligible employee is the servicemember's spouse, son, daughter, parent, or next-of-kin (military caregiver leave).

B. Request for FMLA

- i. When the need for FMLA leave is foreseeable, the employee shall request FMLA leave at least 30 days in advance of the expected beginning date. Otherwise, the employee shall provide notice as soon as is practicable.
- ii. When the need for FMLA leave is unforeseeable and an employee is out of work for three (3) consecutive work days, the Human Resources Department shall notify the employee of his eligibility for FMLA leave, beginning the first date of his absence. The Human Resources Department shall provide the employee with the necessary FMLA leave forms.

C. Medical Certification of a Serious Health Condition

- i. Whenever an employee requests FMLA leave for his own serious health condition, or that of his spouse, child, or parent, the Act requires medical certification by the attending physician, which shall be submitted within 15 days of the written request for FMLA leave, or the County may deny FMLA leave.
- ii. The County may require the employee to obtain certification, subsequent to the original, every 30 days during FMLA leave.

- iii. If the County has reason to doubt the validity of a medical certification, it may require a second and third opinion at its own expense.
- iv. Upon conclusion of FMLA leave taken for the employee's own serious health condition, the employee shall provide medical certification indicating his fitness for duty and ability to perform the essential functions of his job.
- v. The attending physician's certification shall include the date the serious health condition began and its probable duration. If FMLA leave is requested for the serious health condition of an employee's spouse, child, or parent, the attending physician's certification shall include a statement that the employee is needed to care for the family member and an estimated amount of time the employee shall be needed to provide such care.

D. Intermittent Leave

Prior to beginning FMLA leave, an employee and the Department Director / Constitutional Officer shall, by mutual agreement, establish an intermittent or reduced schedule, if an adjusted work schedule is medically necessary.

i. *Minimal Disruption*

In any case in which an employee requests intermittent leave and/or a reduced schedule, the employee shall make every reasonable effort not to unduly disrupt the work operation.

ii. *Another Position*

In any case in which an employee requests intermittent leave and/or a reduced schedule, the Department Director / Constitutional Officer may assign the employee to work, for his usual pay, in another position that better meets the department's needs in accommodating the intermittent or reduced schedule while the employee is on FMLA leave.

E. Military Leave

i. *Leave for "Qualifying Exigency"*

1. Eligible employees qualify for 12 weeks of unpaid, job-protected leave during a rolling twelve-month period for any "qualifying exigency," or necessary or urgent leave, resulting from the employee's spouse, child, or parent serving on active duty (or notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
2. An employee requesting leave for qualifying exigency shall give notice to his Department Director / Constitutional Officer as soon as is reasonable and practicable.

3. The Human Resources Department will request certification to verify the covered service member's status.

ii. *Leave to Care for Injured or Ill Service Members*

1. Eligible employees qualify for 26 weeks of unpaid, job-protected leave to care for a spouse, child, parent, or next-of-kin who is a member of the Armed Forces and who is undergoing medical treatment or recuperating from a "serious injury or illness" incurred while on active duty. This leave is only available during a single twelve-month period.
2. An employee requesting leave for the care of an injured or ill service member shall give notice to his Department Director / Constitutional Officer as soon as is reasonable and practicable.
3. The Human Resources Department will request certification to verify the covered service member's status.

F. Compensation During FMLA Leave

During FMLA leave, an employee shall use accumulated Annual Leave, Sick Leave, or Paid Time Off to compensate for the time taken. Any portion of FMLA leave not covered by the employee's accumulated leave balances shall be unpaid, with the exception of employees who qualify for short-term disability and may receive a portion of their compensation. The use of FMLA leave and short-term disability shall be concurrent.

G. Benefits During FMLA Leave

For any portion of FMLA leave where the employee is paid, deductions for the employee's usual share of benefit costs shall continue. Otherwise, the County will continue to pay its portion of benefit premiums, and the employee portion of benefit premiums will be expected to be paid by the employee, as agreed.

Employees shall not accrue Annual Leave, Sick Leave, or Paid Time Off while on leave without pay, but will continue to accrue leave for any portion where the employee is paid. Retirement contributions will only be made for pay periods in which the employee received qualifying compensation. Leave without pay during any pay period will result in no retirement contribution for that pay period.

H. County's Responsibility

i. During FMLA leave, the County shall:

1. Maintain the employee's group health insurance and life insurance coverage, in accordance with terms and schedule of payment;

2. Hold any benefits, other than group health insurance and life insurance, unchanged, until the employee returns to paid status; and
3. Reserve the employee's original position, or one of equivalent pay and status.

ii. The County may deny reinstatement if:

1. Legitimate business conditions have resulted in the elimination of a particular position;
2. Denial is necessary to prevent substantial and grievous economic injury to the County's operations that would be caused by the reinstatement of certain highly-compensated, key employees; or
3. An employee cannot medically certify that a return to work is without risk of injury to himself or others.

I. Human Resources' Responsibility

During FMLA leave, the Human Resources Department shall:

1. Maintain, issue, and review the current applicable forms for completion by the employee;
2. Contact the healthcare provider if clarification or authenticity of the certification is needed;
3. Notify the employee within five (5) business days of receipt of medical certification whether the requested leave qualifies as FMLA leave; and
4. Ensure all accrued leave balances are used before the employee enters a Leave Without Pay (LWOP) status.

J. Department Director / Constitutional Officer's Responsibility

During FMLA leave, the Department Director / Constitutional Officer shall:

1. Notify the Human Resources Department if an employee is out of work for three (3) consecutive work days, or when they receive notice (either verbal or written) of an event that may qualify for FMLA leave;
2. Submit any FMLA leave data received from the employee to the Human Resources Department as soon as practicable; and
3. Establish, when applicable, by mutual agreement, an intermittent and/or reduced work schedule, if medically necessary. The Department Director / Constitutional

Officer may assign the employee to work, for his usual pay, in another department or position that better meets the department's needs in accommodating the intermittent or reduced schedule or accommodations while the employee is on FMLA leave.

K. Employee's Responsibility

The employee shall provide both his immediate supervisor and the Human Resources Department:

1. A written request of FMLA leave at least 30 days in advance of the expected beginning date, when such need for leave is foreseeable. Where the need for leave is unforeseeable, the employee shall give as much notice as possible.
2. Medical documentation of his own, spouse's, child's, or parent's serious health condition, as required by the FMLA.

L. Employee's Return to Work

If the employee returns to work following use of FMLA leave, as agreed, the County shall provide the employee's original position, or one of equivalent pay and status.

M. Employee's Failure to Return to Work

If the employee does not return to work on the agreed date, separation from County employment may result. The employee shall repay the cost of benefit premiums paid by the County during FMLA leave, if the employee does not return to work as agreed, for any reason other than a serious health condition.