

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

FAMILY AND MEDICAL LEAVE

POLICY NO.: 5.3

EFFECTIVE: 10/1/96

REVISED: 9/24/19

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. More detailed information regarding the Family and Medical Leave Act can be found at the Department of Labor’s website: www.dol.gov/whd/fmla/index.htm.

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) as of the date the FMLA leave is to start and who have worked at least 1,250 hours in the 12-month period immediately before the date the FMLA leave is to start.

DEFINITIONS:

1. **Child:** A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*, who is under 18 years of age or who is 18 years of age or older and incapable of self-care because of a mental or physical disability. The onset of a disability may occur at any age for purposes of the definition of an adult child under the FMLA.
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. **In Loco Parentis:** An individual stands in *loco parentis* to a child if he or she has day-to-day responsibilities to care for or financially support the child. The person standing in *loco parentis* is not required to have a biological or legal relationship with the child. Although no legal or biological relationship is necessary, grandparents or other relatives, such as siblings, may stand in *loco parentis* to a child under the FMLA where all other requirements are met. The *in loco parentis* relationship exists when an individual intends to take on the role of a parent. Similarly, an individual may have stood in *loco parentis* to an employee when the

employee was a child even if the individual has no legal or biological relationship to the employee.

4. Next of Kin: With regard to an individual, the nearest blood relative of that individual.
5. Parent: 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.”
6. 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.
7. Spouse: A husband or wife, as defined or recognized in the state where the individual was married, including in a common law marriage or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States, if the marriage could have been entered into in at least one state.

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).

An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during a single twelve-month period.

Eligible spouses who work for the same employer are limited to a combined total of 12 workweeks of leave in a 12-month period, and are also limited to a combined total of 26 workweeks in a 12-month period to care for a covered servicemember.

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

The County will continue to pay its portion of benefits premiums while an employee is on FMLA leave.

The employee shall be responsible for his share of benefits premiums, as paid by the employee prior to FMLA leave. The terms and conditions under which these payments must be made shall be established in advance. If the employee chooses to use accrued leave during FMLA leave, the employee's share of benefits premiums shall be paid by the method customarily used (i.e. payroll deduction).

If an employee's benefits premiums payment is more than thirty (30) days late, the County may drop the employee's coverage. In order to drop insurance coverage for an employee whose payment is late, the County must provide written notice to the employee that the payment has not been received and that his coverage will end at a specified date at least 15 days after the date of the written notice, unless payment is received by that date.

Even if the County ceases insurance coverage due to an employee's failure to pay his premiums, all other obligations under the FMLA would continue.

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 may be required to repay the cost of benefits premiums paid by the County during FMLA leave, if the employee does not return to work as agreed, unless the reason the employee does not return is because of:

- The continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember that would otherwise entitle the employee to leave under FMLA; or
- Other circumstances beyond the employee's control.