



EFFINGHAM COUNTY BOARD OF COMMISSIONERS

Human Resources Standards of Practice

Standards of Practice: Section 5.04	Issue Date: 11/06/2018 New ____ Revised ____ Supersedes Policy Dated:
Title: Family and Medical Leave	Approved By Effingham County Board of Commissioners

5.04 - FAMILY AND MEDICAL LEAVE

A. STANDARD

1. Family and Medical leave - it is the policy of the County to grant up to twelve weeks of family and medical leave, during any twelve month period rolling backward, to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA). The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances, and as specified in this policy. The County shall require the employee to use accrued paid leave to pay for the employee share of benefit costs concurrently with FMLA leave. When a holiday occurs during a week when a full week of FMLA is taken, the holiday is counted against the employee's FMLA entitlement. When an employer's business is closed (severe weather) the days on which an employer's activities has ceased don't count against the employee's FMLA leave entitlement.

2. Military Caregiver Leave – a caregiver leave permits a spouse, son or daughter, parent or next of kin to take up to a maximum of 26 workweeks of FMLA leave in a single 12 month period. Caregiver leave is to care for current service members of the regular 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.

a. The injury or illness must have occurred while on active duty in the line of duty and must render the service member medically unable to perform the duties of his or her office.

b. Former service members are not covered.

c. The service member must be on outpatient status.



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d. During the single 12 month period the caregiver leave and other forms of FMLA leave (serious health condition of employee or immediate family member, pregnancy, or exigency leave) are combined for a maximum of 26 weeks, not 38 weeks.

4. For purposes of FMLA an "Employer" includes any person who acts directly or indirectly in the interests of an employer to any of the employer's employees. This means that individual officers, managers and supervisors can be held personally liable for FMLA violations.

B. ELIGIBILITY

In order to qualify to take family and medical leave under this policy, the employee must meet all of the following conditions:

1. The employee must have worked with the County for at least twelve (12) months. The twelve months need not have been consecutive.

2. 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 was on leave during the week.

3. The employee must have worked at least 1250 hours during the twelve-month period immediately before the date when the leave would begin. [Hours paid but not worked are excluded.]

4. The employee must be taking the leave for one of the following qualifying events:

a. A serious health condition that makes the employee unable to perform the employee's job.

b. To care for the employee's spouse, son or daughter, or parent who has a serious health condition.



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c. To care for the employee's child after birth or placement for adoption or foster care.

d. To care for a covered Service Member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin.

e. A qualifying exigency arising out of the employee's spouse, child or parent's active duty (or notification of an impending call or order to active duty) in the National Guard or Reserves in support of contingency operations.

C. DEFINITIONS

1. Serious Health Condition – an illness, injury, impairment or physical or mental condition that involves:

a. Inpatient care, an overnight stay, in a hospital, hospice, or residential medical care facility and any period of incapacity or subsequent treatment in connection with such inpatient care.

b. A condition that requires continuing care by a licensed health care provider.

2. Incapacity – inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment or recovery. Treatment includes examinations by a health care provider to determine if a serious health condition exists and evaluations of the condition. Routine eye, dental or physical exams are not considered treatment.

3. Continuing treatment – includes a course of prescription medications or therapy requiring special equipment (i.e., oxygen). This does not include taking over the counter drugs, bed rest or drinking fluids, since these can be initiated without a visit to a health care provider. Cosmetic treatments are not included (i.e., treatments for acne or plastic surgery) unless inpatient hospital care is required or complications develop.



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4. Son or Daughter – is defined as a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis. With the exception of the two forms of family military leave, a covered son or daughter must be:

a. Under 18 years of age.

b. 18 years of age or older but incapable of self care because of a mental or physical disability.

1. Incapable of self care means that the person cannot provide three or more Activities of Daily Living (ADL) for himself or herself

c. Mental or physical disability means an impairment that limits one or more major life activities as defined by the ADA.

5. Parent – a biological, adoptive, step- or foster care mother or father or some who stands in loco parentis to the employee when the employee was under the age of 18 or incapable of self-care. Parents-in-law are not included under the FMLA.

6. Loco parentis – the individual who has or had day to day responsibility for the child. Legal guardians are included, grand parents or any other relative are included.

7. Spouse – a husband or wife as defined or recognized under the state law for the purposes of marriage in the state where the employee resides, including common law marriages in states where it is recognized.

8. Next of Kin – of a covered service member means the nearest blood relative other than the covered service member’s spouse, parent, son or daughter in the following order of priority:

a. If the covered service member has designated in writing another blood relative, that person shall be the covered service member’s only next of kin.



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b. If no designation is made, and there are multiple family members with the same level of relationship, all are considered next of kin and may take leave to provide care either consecutively or simultaneously.

1. Blood relatives granted legal custody by a court decree or statutory provisions.

2. Brothers and sisters, grandparents, aunts and uncles and first cousins.

9. Qualifying Exigency Leave – the qualify exigency is when a spouse, son, daughter or parent’s (the covered military member’s) active duty or because the covered military member has been notified of an impending federal (not state) call or order to active duty in the armed forces in support of a contingency operation.

a. A military member must be a member of the National Guard or Reserve – no the regular armed forces, except for certain retired members of regular armed forces.

b. The active duty orders of a covered military member will generally specify if the service member is serving in support of a contingency operation.

c. Child of a military member is defined as the son or daughter of the employee who is on active duty and is of any age.

d. Family members may use all or part of the regular allotment of 12 weeks of FMLA leave during the employer’s designated twelve month period.

e. Eight Nonmedical Qualifying Exigencies – It must be related to active duty or a call to active duty.

1. Short notice deployment of less than seven days. The employee can take up to seven calendar days; leave can extend beyond the military member’s deployment date.



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2. Military events and related activities – official ceremonies, programs or events, family support or assistance programs, or informational briefings sponsored or promoted by the military, military service organization, or the American Red Cross related to active duty or a call to active duty.

3. Child care and school activities to arrange for alternative child care; to provide child care on an urgent and immediate basis; to enroll a child in or transfer to a new school or day care; to attend meetings with staff at school or day care.

4. Financial and legal arrangements – preparing and executing financial and health care powers of attorney, transferring bank account signature authority, or enrolling in the Defense Enrollment Eligibility Reporting System (DEERS); acting as the covered military member’s representative before a federal, state or local agency to obtain, arrange or appeal military service benefits.

5. Counseling (nonmedical) for the employee, covered military member or child of the covered military member.

6. Rest and recuperation of up to five days each time the covered military member is given short-term, temporary rest and recuperation leave.

7. Post deployment activities of 90 days following termination of the military member’s active duty such as arrival ceremonies, reintegration briefings or issues arising from death of a covered member (recovering the body, funeral arrangements).

8. Additional activities where the employer and employee agree to the leave, timing and duration.

D. GENERAL PROVISIONS

1. In the case of a serious health condition, the County will require the employee to provide a doctor's certification by having the treating physician complete a WH-380-E, Physician Certification or WH-380-F, Physician Certification for



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Family Member. In the case of military caregiver leave the employee will have the treating physician complete the WH-385, Certification Form.

2. Under this policy, an eligible employee may take up to twelve weeks of leave, concurrent with all other applicable leave and time off, during a twelve-month period, to be measured backward from the date the employee uses any leave under this policy. If an employee has 3 consecutive absences due to their own or family or medical reasons the absence will be counted as FMLA, even if there was no written request.

3. Each time an employee takes leave; the County will compute the amount of leave the employee has taken under this policy and subtract it from the twelve weeks of available leave. The balance remaining is the amount the employee is eligible to take at that time.

4. Employment will be terminated if the medical leave of absence exceeds the number of days allowed by this policy. Once the total time of absence is used, and the employee has neither returned to work nor received approval for extended medical leave, then failure to return to work will be considered a resignation.

5. A husband and wife who are employed by the County and are eligible for FMLA leave may be limited to a combined total of 12 weeks of leave during any 12-month period if leave is taken:

- a. For the birth of the employee's child and to care for that child after birth;
- b. For the placement of a child with the employee for adoption or foster care;
- c. To care for the employee's spouse, son, daughter or parent with a serious health condition.
- d. Leave is not available to a non-spouse father of the child, i.e., same sex domestic partner or boyfriend.



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6. Leave for birth, adoption, or foster care must conclude within 12 months of the birth or placement.

7. Leave to care for a child is restricted to children under the age of 18, unless they are "incapable of care" because of a physical or mental disability that substantially limits one or more major life activities.

8. Employees with questions about which illnesses are covered under this FMLA policy or under the County's sick leave policy are encouraged to consult with the Human Resources Department.

E. STATUS AND BENEFITS DURING LEAVE

1. While an employee is on 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.

2. If the employee fails to return to work (report to work for 30 calendar days) after an approved unpaid leave of absence, the County may recover from the employee the cost of any payments made to maintain the employee's health insurance. After returning from FMLA, the employee will pay the County back the portion of the premiums that are normally his/her responsibility. The total amount paid will be divided by 3 and taken out of three pay period checks unless other arrangements are made with Human Resources before going on FMLA. If the employee does not return from FMLA, then the responsibility of payment is his/hers.

F. STATUS AFTER LEAVE

An employee who takes leave under this policy will be able to return to the same job or a job with equivalent status, pay, benefits and other employment terms (substantially equivalent skill, effort, responsibility and authority).

G. PAID AND UNPAID LEAVE

An employee, who is taking leave because of the employee's own serious health condition or the serious health condition of an immediate family member, must use



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accrued Paid Time Off to cover the cost of the elected benefits, if applicable, prior to being eligible for unpaid leave for the remainder of the twelve weeks.

H. INTERMITTENT LEAVE OR A REDUCED WORK SCHEDULE

1. An employee may take FMLA leave in 12 consecutive weeks, use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced-hour schedule. In all cases, the leave may not exceed a total of 12 weeks over the preceding twelve-month period.

2. The County may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

3. For the birth, adoption, or foster care of a child, the County and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.

4. If the employee is taking leave for a serious health condition or because of the serious health condition of an immediate family member, the employee should try to reach an agreement with County before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of intermittent leave is medically necessary. The County may require certification of the medical necessity.

I. CERTIFICATION OF THE SERIOUS HEALTH CONDITION

1. The County shall require medical certification to support a claim for leave for an employee's own serious health condition or to care for a seriously ill child, spouse or parent. For the employee's own medical leave, the certification must include the statement that the employee is unable to perform at least one of the functions of his/her position. For leave to care for a seriously ill child, spouse, or parent,



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the certification must include an estimate of the amount of time that the employee is needed to provide care.

2. The employee shall respond to such request for certification within ten (10) days of the request, or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification may be provided by using the Medical Certification.

3. If the employee plans to take intermittent leave or work a reduced schedule, the certification must also include dates and the duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced schedule.

J. PROCEDURE FOR REQUESTING LEAVE

1. Except where leave is not foreseeable, all employees requesting leave under this policy must notify the Human Resources Department.

2. When an employee plans to take leave under this policy, the employee must give the Human Resources Department and the Department Head thirty (30) days notice. If it is not possible to give thirty (30) days notice, the employee must give as much notice as is practicable. An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to the County's operations.

3. If an employee fails to provide thirty (30) days notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least thirty (30) days from the date the County receives notice.

4. While on leave, employees are requested to report periodically to the Human Resources Department regarding the status of the medical condition and their intent to return to work.