

02. PERSONNEL

2.14. Family and Medical Leave Act Provisions

BOS Adopted – Dec 2, 2009

2.14.1. Objective. It is the objective of Fluvanna County to provide eligible employees with up to 12 weeks of unpaid family or medical leave because of the birth of a child or the placement of a child with the employee for adoption or foster care, because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition, or because the employee's own serious health condition makes him or her unable to do his or her job.

2.14.2. Definitions

A. Eligible Employees - Employees who have (1) been employed by the County for at least 12 months; and (2) worked at least 1,250 hours during the 12 months before the start of the leave.

NOTE: The required 1,250 hours do not have to be worked during consecutive months. However, the 1,250 hours of work requirement applies to the 12 months immediately preceding the start of the leave.

B. Employment Benefits - All benefits provided by the County to salaried employees including group life insurance, health insurance, annual and sick leave, educational benefits, and retirement contributions.

C. Family and Medical Leave - A leave without pay (or use of an employee's accrued leave) for up to 12 workweeks during a 12-month period for the reasons specified in this policy in conformance with the federal Family and Medical Leave Act (FMLA) of 1993.

D. Health Care Benefits - The health insurance program covering eligible employees.

E. Health Care Provider - Health care providers include the following:

1. Doctors of medicine or osteopathy who are authorized to practice medicine or surgery (as appropriate) by the state in which the doctors practice;

2. Any other person determined by the Secretary of the Department of Labor to be capable of providing health care services; and

3. Others capable of providing health care services to include only podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners and nurse-midwives authorized to practice in the state and performing within the scope of their practice as defined under state law. This also includes Christian Scientist practitioners listed with the First Church of Christ, Scientist in Boston, although an employee or family member may be required

to submit to a medical examination for a second or third opinion (not treatment) from a non-Christian Science practitioner.

F. Parent - Biological parent or individual who stood in place of the parent and was charged with the duties and responsibilities of the parent.

G. Son or Daughter - A biological, adopted or foster child, a stepchild, or legal ward, or a child of a person standing in place of the parent. The child must either be under age 18 or be age 18 or older and incapable of self-care because of a mental or physical disability.

H. Spouse - Husband or wife as recognized under the laws of the Commonwealth of Virginia for the purpose of marriage.

I. Serious Health Condition/Illness - An illness, injury, impairment or physical or mental condition that involves: (1) inpatient care in a hospital, hospice, or residential medical care facility; or (2) continuing treatment by a health care provider.

2.14.3. When Family and Medical Leave Allowed

A. Time Frames for Use of FMLA

1. Eligible full-time employees may take up to 12 workweeks (60 workdays; 480 work hours) of family and medical leave (FMLA) in a 12-month period. The time missed from work due to FMLA cannot exceed 12 weeks in a 12-month period.

2. The 12-month period is calculated from the leave commencement date. The first day of family medical leave constitutes the beginning of the 12-month cycle and remains the same regardless of whether the leave is continuous or intermittent.

B. FMLA for Full-Time Employees. Eligible full-time employees may take up to 12 workweeks (60 workdays; 480 work hours) of unpaid family and medical leave per 12-month period for the following reasons:

1. The birth of a child (to be taken within 12 months of the child's birth);
2. The placement of a child with the employee for adoption or foster care (to be taken within 12 months of date of placement);
3. In order to care for a child, a dependent son or daughter over 18 years of age who is incapable of self-care because of a mental or physical disability, a spouse, or a parent who has a serious health condition that involves:
 - a. In-patient care in a hospital, hospice, or residential medical care facility; or
 - b. Continuing treatment by a health care provider.

4. A serious personal health condition that renders the employee unable to perform the functions of his or her position. Departments may request certification that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act.

C. FMLA for Eligible Part-Time Employees. Eligible part-time employees may take up to 12 weeks of family and medical leave in a 12 month period for the reasons listed in Section "O.3, b" above. Actual hours taken will be counted on a prorated basis corresponding to the percentage of hours they normally are scheduled to work during a 12 month period.

EXAMPLE:

A part-time employee works 25 hours per week year-round. During any 12-week period, she works a total of 300 hours. Therefore, if intermittent leave is taken, she may take up to 300 hours of family and medical leave in a 12 month period.

2.14.4. Restricted Use of Family and Medical Leave

A. Family and medical leave may not be used for short-term conditions for which treatment and recovery are brief, such as minor illnesses and out-patient surgical procedures with expected brief recuperating periods. It does not provide for the intermittent care of a child for such commonplace illnesses as colds and flu.

B. When both parents of a child work for the County in the same facility, the full amount of leave may be limited to a combined total of 12 workweeks in a 12-month period when the leave is for the birth, adoption, or foster care placement of a child.

2.14.5. Paid Leave. Employees are required to use all paid leave, as appropriate under each particular leave policy, for absences covered under family and medical leave. A department may designate such leaves as family and medical leave, if it meets the conditions of Section "O.3, b" above. The County is required to provide only the number of unpaid workdays which, when combined with the number of days of other leave taken, equal a total of 60 workdays or 480 work hours.

EXAMPLE:

An employee uses six days of sick leave and 15 days of annual leave to care for a parent who has a serious health condition. The County must allow him to take 39 days of unpaid leave.

2.14.6. Intermittent Leave or Leave on Reduced Schedule. Employees may take intermittent leave or work a reduced schedule, not to exceed 480 hours for full-time employees, as follows:

A. When medically necessary because of an eligible employee's own serious health condition or the serious health condition of a child, spouse or parent, an employee may take family or medical leave on an intermittent leave basis or a reduced schedule as indicated below.

1. Intermittent leave schedule - a leave schedule permitting the employee to take leave periodically for a few hours a day (less, than eight hours), or for a few days, on an as-needed basis.

NOTE: Employees may be required to provide medical certification that intermittent leave is necessary.

2. Reduced schedule - a leave schedule permitting the employee to reduce his or her usual number of hours worked per workweek or per workday.

B. Employees who must take intermittent leave or work a reduced schedule may either use their available paid leave balances as permitted by each specific leave policy or take unpaid family and medical leave. A department may designate such leave (paid or unpaid) as family and medical leave, if it meets the conditions of Section "O.3, b" above.

C. Employees do not accrue annual and sick leave when they are on leave without pay status during family and medical leave.

D. When an employee takes leave to care for a newborn child, or because of the placement of a son or daughter with him or her for adoption or foster care, the employee may take leave intermittently or on a reduced schedule, if departmental management agrees on such an arrangement beforehand.

E. When the conditions noted in Section "O.6, (1)" above are applicable, the department can temporarily transfer the employee to another position that better accommodates the intermittent leave or reduced schedule as long as the new position carries equivalent pay and benefits.

2.14.7. Family and Medical Leave Notification/Scheduling

A. Employee Responsibility

1. An employee should submit a written request for family and medical leave at least 30 days before the anticipated beginning of the family and medical leave, unless emergencies or unforeseen events preclude such advance notice.

2. The County requires that a request for family and medical leave be supported by a health care provider's certification of the medical condition of the person affected to include the date when the serious condition began, the probable duration of the condition, and other appropriate facts as detailed below before granting family and medical leave.

3. The medical certification provisions encompass both physical and psychological care, and it includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The term

also includes providing psychological comfort and reassurance which would be beneficial to a seriously ill child or parent receiving inpatient care.

a. A family illness request requires a statement that the employee is needed to care for a child, spouse or parent, and must include the estimated time needed.

b. A personal illness request requires a statement that the employee is unable to perform the essential functions of his or her job as defined by the Americans with Disabilities Act.

c. An intermittent leave or reduced schedule request necessitated by an employee's own health condition must include a statement of the medical necessity for the leave and the expected duration.

d. An intermittent leave or reduced schedule requested for the care of an employee's family member requires a statement that the employee's leave is "needed to care for" the family member, the expected duration, the expected treatment dates and the schedule of intermittent leave or reduced leave. The term "needed to care for" includes:

- Situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home; and

- An employee's intermittent leave or a reduced schedule necessary to care for a family member including not only a situation where the family member's condition itself is intermittent, but also where the employee is only needed intermittently, such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

NOTE: When possible, the employee should provide certification in advance of, or at the commencement of, the requested leave. When that is not possible, certification must be provided reasonably soon after the leave begins.

4. The County requires an employee to report periodically during the leave period on his or her leave status and intention to return to work, and to provide subsequent re-certifications on a reasonable basis (every 4 to 6 weeks).

B. County Actions

1. While FMLA protection is typically initiated by a leave request, employees need not expressly assert FMLA rights by name, or even make a formal leave request, in order to obtain protection. Rather, the Act imposes obligations on an employer as soon as it acquires knowledge that an last updated absence is potentially FMLA-qualifying. It is important to remember that even requests for paid leave, if for an FMLA-qualifying condition, need to be documented as such and the employee notified in writing that the leave will count toward the 12-

weeks of eligibility. Subsequently, records must be kept in accordance with this policy and the guidelines set out in the FMLA.

2. If a supervisor lacks sufficient information to determine whether the leave qualifies under FMLA, then it is his/her obligation to inquire further and preliminarily designate the leave as family and medical leave. Nonetheless, an employee giving notice of the need for unpaid FMLA leave must explain the reasons for leave so as to allow this determination.

a. Once leave is designated, the supervisor must immediately notify the employee of the designation. The notice may be oral, but must be confirmed in writing by the next payday (or subsequent payday if the next payday is less than one week away). If leave has already begun, the notice should be mailed to the employee's home address.

b. Written notice must set out clearly the obligations of the employee during leave, and any consequences for failing to meet these obligations. The notice must also provide:

- That the leave will count against the employee's annual FMLA entitlement;
- Any requirements for furnishing medical certification, and the consequences for failing to do so;
- The employee's right to substitute paid leave, whether you will require substitution, and any conditions related to substitution;
- Any requirements for making premium payments to maintain health benefits, the arrangements for making such payments, and the consequences for failing to make such payments timely;
- Any requirements for presenting fitness-for-duty certificates prior to returning to work;
- The employee's right to the same or an equivalent job upon return from leave;
- The employee's potential liability for payment of health benefit premiums paid by the employer during leave, if he or she fails to return.

NOTE: Although leave typically may not be designated as FMLA leave after the employee returns to work, you may designate the leave retroactively (within two days of the return) if you learn of the reason for absence only after the employee's return.

C. Second and Third Opinions

1. The County may require, at its own expense, a second opinion from its designated or approved health care providers. (This health care provider cannot be one who is employed by the County on a regular basis.)

2. When the second opinion differs from the first, the County may, at its own expense, require a third opinion from a health care provider designated or approved jointly by the employee and the County. The opinion of the third health care provider shall be considered final and binding upon the employer and the employee.

2.14.8. Restoration to Position

A. Types of Reinstatement. At the end of family and medical leave, employees normally are to be reinstated as follows:

1. Original position - departments normally must restore employees to the positions they held (or to equivalent positions) when the leave began.

2. Equivalent position - if previous positions have been filled, employees are entitled to restoration to equivalent positions. (standard of equivalence: requires comparability and correspondence to duties, terms, conditions, and privileges of employees' previous positions)

B. Conditions of Restoration of Position. Departments can require their employees to report periodically on their status and intent to return to work, and can require certification from health care providers that employees are able to return to work.

2.14.9. Status of Benefits During Family and Medical Leave

A. Health Insurance Premiums – County Contribution. The County will continue to contribute to the health insurance premiums of salaried employees who are on leave under the Family and Medical Leave Act as discussed below:

1. When employees are using paid annual or sick leave under the provisions of FMLA, the payroll deductions of their portions of the premiums continue.

2. When employees are on leave without pay under the provisions of FMLA, their premium contributions will be handled as if they were on leave without pay.

B. Health Insurance Premiums – Employee Contribution. Employees who are on leave under FMLA will pay the same portion of their health insurance premiums as they would if they were not on leave.

1. Premiums are due to the County by the first day of each month of coverage.

2. If employees fail to make premium payments, the County will follow the same procedures to terminate coverage as they would if employees failed to pay premiums while on leave without pay.

3. If employees fail to return to work at the end of leave under FMLA, the County may recover from them the County's share of premiums paid during the period of leave.

4. However, there will be no recovery of premiums if employees fail to return to work as a result of:

a. the onset, recurrence, or continuation of a serious health condition that entitles them to leave to care for themselves or for a family member; or

b. other circumstances beyond the employee's control.

EXAMPLES:

- If an employee fails to return to work secondary to a disabling condition, the department will not seek reimbursement for the County's contributions for health insurance coverage during the period of leave.

- If an employee fails to return to work at the end of FMLA leave because of his or her acceptance of other employment, the County will seek to recover the County's contributions for health insurance coverage during the period of leave.

C. Life insurance. The County will continue to pay VRS life insurance premiums while employees are on family and medical leave.

D. Leave Accrual. Employees will not accrue annual or sick leave hours during any period of leave without pay.

E. Retirement

1. Retirement contributions (including the component to fund the health credit) will be made for any period in which the employee has received qualifying compensation.

2. Retirement contributions will not be made for any pay period in which no qualifying compensation has been received by the employee (i.e., if the employee was on leave without pay for the entire pay period).

2.14.10. Management of FMLA Records. The County must make, keep and preserve records pertaining to their obligations under FMLA. Records must be kept for at least three years. Required records must include the information listed below:

A. Basic payroll and identifying employee data, including: name, address, and occupation; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.

B. Leave designated as FMLA leave, both paid and unpaid, and the dates employees took it. (If FMLA leave is taken in increments of less than a day, the hours must be noted.)

C. Copies of employees' notices of leave furnished to the County.

D. Any documents (including written and electronic records) describing employee benefits or policies and practices regarding the taking of paid and unpaid leaves.

E. Records of premium payments.

F. Records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members are to be maintained in separate files/records and treated as confidential medical records except:

1. Supervisors and managers may be informed regarding necessary restrictions on work duties and necessary accommodations;

2. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and

3. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.

2.14.11. Use of County Forms. Employees shall request family/medical leave through use of the leave request form with certification attached. It is the employee's responsibility to secure all appropriate information and submit this information to the County as required. A request cannot be considered until complete information (in a clear format) is received. Incomplete information or information that is unclear will be returned to the employee.

2.14.12. Service Member Family and Medical Leave Addendum. This Addendum supplements our FMLA policy and provides general notice of the employee rights to service member Family and Medical Leave. Except as mentioned below, an employee's rights and obligations to service member FMLA Leave are governed by our existing FMLA policy.

A. Employee Entitlement to Servicemember FMLA

1. Service member FMLA provides eligible employees unpaid leave for one, or for a combination, of the following reasons:

2. A "qualifying exigency", as defined by the Department of Labor, because the employee's spouse, son, daughter or parent is on active duty (or has been notified of an impending call to duty) in the Armed Forces in support of a "contingency operation", and/or To care for a covered family member who has incurred an injury or illness in the line of duty while on active duty in the 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.

3. Notice of the need for such leave to one's employer must be reasonable and practicable.

B. Duration of Service Member FMLA

1. When Leave Is Due to a “Qualifying Exigency”: An eligible employee may take up to 12 workweeks of leave during any 12-month period.

2. When Leave Is To Care for an Injured or Ill Service Member. An eligible employee who is the spouse, child parent, or next-of-kin of the covered service member may take up to 26 workweeks of leave during a single 12-month period to care for the service member injured or taken ill during active duty. Leave to care for an injured or ill service member when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period.

3. Service member FMLA runs concurrent with other leave entitlements provided under federal, state and local law.

FMLA Amendment - Military Leave Entitlements Effective October 28, 2009

4. On October 28, 2009, President Obama signed the National Defense Authorization Act for Fiscal Year 2010 into law. The bill includes provisions amending the Family and Medical Leave Act (FMLA) military family leave entitlements, expanding qualifying exigency leave and care giver leave.

5. Qualifying exigency leave will now cover family members of the regular Armed Forces, in addition to current coverage of family members of the Guard or Reserves. It will also cover family members of individuals deployed to a foreign country, removing the current requirement that National Guard or Reserve members be serving “in support of a contingency operation.”

6. Military caregiver leave has also been expanded so it may be used by family members to care for Veterans undergoing treatment, recuperation or therapy for an injury, as long as the veteran was a member of the Armed Forces, National Guard or Reserves within five years of requiring care. The bill also expands military caregiver leave so that employees may use it to care for a covered service member’s serious injury or illness incurred because service on active duty aggravated an existing or preexisting injury. Previously, law only allowed caregiver leave for serious illnesses or injuries incurred on active duty.