



POLICY TITLE: Family and Medical Leave

POLICY NO.: PR-15

I. PURPOSE

The Board of County Commissioners of Washington County, Maryland (“County”), complies with the Family and Medical Leave Act (FMLA) and all applicable and implementing regulations, as amended from time to time.

The purpose of this Policy is to provide County employees with a general description of their rights under the FMLA. In the event of a conflict between this Policy’s provisions and applicable law under the FMLA, the FMLA will prevail and employees will be afforded all rights as required thereunder. This Policy does not and is not intended to contain all provisions of the FMLA. The FMLA and applicable federal regulations, as well as applicable State law, will be consulted in conjunction with and in addition to the provisions of this Policy. This Policy specifically includes provisions which address qualifying exigency and military caregiver leave.

Questions regarding the content or operation of this Policy should be directed to the Department of Human Resources. An employee who has a dispute concerning this Policy should contact the Director of Health and Human Services in writing.

II. GENERAL POLICY

Under this Policy and the FMLA, the County will grant, to eligible employees for eligible purposes, up to 12 weeks of leave (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 rolling period. The leave may be paid, unpaid, or a combination of paid and unpaid leave, depending upon the circumstances of the leave and as specified in this Policy and by the FMLA.

The County posts general notice requirements of the FMLA, together with supplemental information concerning military family leave as required by the U.S. Department of Labor (DOL), on County bulletin boards and on the County’s website at www.washco-md.net. Also as required by the DOL under the FMLA, the County provides all new employees with notices on employee rights and responsibilities by including appropriate materials in the information packets provided to new employees during the orientation process.

III. ELIGIBILITY¹

To qualify for family or medical leave under this Policy and the FMLA, an employee must meet all of the following conditions:

- A. The employee must have worked for the County for 12 months or 52 weeks prior to the date on which leave is to begin under the FMLA. The 12 months or 52 weeks need not have been consecutive. 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 Separate periods of employment will be counted, provided that the break in service does not exceed 7 years. Separate periods of employment will be counted if the break in service exceeds 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 County's intention to rehire the employee after the service break; and
- B. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to begin. 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, and those hours of leave will not be counted in calculating the 1,250 hours eligibility test under the FMLA; and
- C. If the employee works in a worksite where less than 50 employees are employed by the County, then the employee will be eligible if the County employs at least 50 employees within 75 miles of that worksite. Distance is calculated by using available transportation by the most direct route.³

IV. QUALIFYING LEAVE⁴

- A. To qualify as leave under this Policy and the FMLA, the leave must be for one of the following reasons:⁵
 - 1. Because of the birth of a son or daughter and to care for the newborn child;⁶

¹ See 29 USC § 2611(2).

² See 29 CFR §§ 825.110(a) and (b).

³ See 29 CFR § 825.111.

⁴ See 29 USC § 2611(2).

⁵ See 29 USC § 2612 and 29 CFR § 112.

⁶ See 29 CFR § 825.120.

2. Because of the placement of a son or daughter with the employee for adoption or foster care;⁷
3. To care for the employee's spouse, son, daughter, or parent with a serious health condition;⁸
4. Because of a serious health condition⁹ that makes the employee unable to perform the functions of the employee's job;¹⁰
5. Because of any qualifying exigency (as the U.S. DOL Secretary of Labor determines by regulation) arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces;¹¹
6. 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 of the service member.¹²

B. The following pertain to specific types of leave as indicated:

1. For the immediately preceding subsections A.1. and A.2., the leave must be taken within one year of the birth or placement of the child.
2. For the immediately preceding subsections A.3. and A.4., this Policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of more than 3 consecutive days of incapacity with the first visit to the health care provider within 7 days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.¹³

⁷ See 29 CFR § 825.121.

⁸ See 29 USC § 2611(11) defining a "serious health condition" as an illness, injury, impairment, or physical or mental condition that involves (A) inpatient care in a hospital, hospice, or residential medical care facility; or (B) continuing treatment by a health care provider. See 29 CFR § 825.113, § 825.114, and § 825.122 for additional guidance regarding serious health conditions, inpatient care, and definitions pertaining to family relationship, respectively.

⁹ See Footnote 8.

¹⁰ See 29 CFR §§ 825.113 and 825.123.

¹¹ See 29 CFR §§ 825.122 and 825.126.

¹² See 29 CFR §§ 825.122 and 825.127.

¹³ See 29 CFR § 825.102 for the definition of "continuing treatment by a health care provider" and additional guidance on incapacity and treatment, pregnancy or prenatal care, chronic conditions, permanent or long-term conditions, and conditions requiring multiple treatments.

Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not “serious health conditions” under the FMLA unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other applicable and required regulatory conditions are met. Mental illness or allergies may be serious health conditions, but only if all other applicable and required regulatory conditions are met.¹⁴

3. For the immediately preceding subsection A.5., an employee whose spouse, son, daughter, or parent either has been notified of an impending call or order to active military duty or who is already on active duty may take up to 12 weeks of leave for reasons related to or affected by the military member’s activation or service. The qualifying exigency must be one of the following: short notice deployment (within 7 or less days of notice), military events and related activities, childcare and related activities arising from the military member’s covered active duty, care of the military member’s parent and related activities arising from the military member’s covered active duty, financial and legal arrangements to address a military member’s absence while on covered active duty, counseling when the need for counseling arises from the military member’s covered active duty, rest and recuperation leave during a military member’s deployment, certain post-deployment activities within 90 days of the end of the military member’s covered active duty, or any other event that the employee and the County agree is a qualifying exigency.¹⁵

FMLA leave for a qualifying exigency under subsection A.5. may begin as soon as the military member receives the activation notice. Under qualifying exigency leave, the definition of son or daughter is the same as the definition of child for other types of FMLA leave, except that the son or daughter may be of any age.¹⁶ FMLA leave taken for a qualifying exigency will count toward an employee’s 12-week maximum of FMLA leave in a rolling 12-month period.

¹⁴ See 29 CFR § 825.113(d).

¹⁵ See 29 CFR § 825.126.

¹⁶ See 29 CFR § 825.122(h).

V. AMOUNT OF LEAVE

- A. An eligible employee may take up to 12 weeks of FMLA leave for any of the reasons stated in Sections IV.A.1. through IV.A.5. of this Policy during any 12-month period. The County will measure the 12-month period as a rolling 12-month period calculated backward from the date an employee begins using any type of FMLA leave under this Policy. Each time an employee uses FMLA leave, the County will compute the amount of leave the employee has taken under this Policy in the last 12 months and subtract it from the 12 weeks of available FMLA leave. The balance remaining will be the amount that the employee is entitled to take at that time.
- B. An eligible employee may take up to 26 weeks of FMLA leave for the reason stated in Section IV.A.6. (military caregiver) of this Policy during a single 12-month period. For military caregiver leave, the County will measure the 12-month period as a rolling 12-month period calculated forward. FMLA leave already taken for other FMLA reasons will be deducted from the employee's total of 26 available weeks of FMLA leave.
- C. If a husband and wife are County employees and each desire to take FMLA leave for the birth of a child, adoption or placement with an employee of a child in foster care, or to care for a parent (excluding parents-in-law) with a serious health condition, the husband and wife may take a combined total of only 12 weeks of leave between them.¹⁷ If a husband and wife are County employees and each desire to take leave to care for a covered injured or ill service member, the husband and wife may take a combined total of only 26 weeks of leave between them.¹⁸

VI. EMPLOYEE STATUS AND BENEFITS DURING LEAVE¹⁹

While an employee is on FMLA leave, the County will continue the employee's health, life, and disability benefits during the leave period at the same level and under the same conditions as if the employee were continuing to work, subject to the following:

- A. If the employee is on paid leave through the use of accrued time, i.e., sick leave, vacation leave, etc., then the County will pay the employer's share of the benefit premiums and the employee will pay the employee's share of the benefit premiums.
- B. If the employee is on unpaid leave, then the County will pay both the employer's share and the employee's share of the benefit premiums.

¹⁷ See 29 CFR §§ 825.120(a)(3) and 825.121(a)(3).

¹⁸ See 29 CFR § 825.127(f).

¹⁹ See 29 USC § 2614.

- C. If the employee has been on any amount of unpaid leave, upon the employee's return to work, the employee will repay the County for the amounts paid by the County for the employee's share of the benefit premiums during the period of unpaid leave. The employee's repayment will be made by the employee's payment of an additional 25% above the employee's share of the benefit premium for each pay period until the County is repaid in full. Repayment amounts will be automatically deducted from the employee's paycheck.
- D. If the employee does not return to work for reasons other than a continued serious health condition of the employee or the employee's family member, or for a circumstance beyond the employee's control, the County will require the former employee to reimburse the County for the amounts that the County paid for the employee's share of the benefit premiums during the employee's unpaid leave period.

VII. EMPLOYEE STATUS AFTER LEAVE

An employee who takes leave under this Policy may be asked to provide a fitness for duty clearance from a health care provider.²⁰ Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent benefits, pay, and other terms and conditions of employment; however, the County may choose to exempt certain key employees from this requirement and not return them to the same or similar position.²¹

VIII. USE OF PAID AND UNPAID LEAVE

- A. An employee who takes FMLA leave under this Policy for the birth, adoption, or placement with the employee of a child in foster care must use all available family sick leave,²² all personal leave, and all vacation leave, prior to being eligible for unpaid leave. All paid and unpaid leave taken pursuant to this Policy will run concurrently with FMLA leave.
- B. An employee who takes FMLA leave under this Policy for the employee's own serious health condition must use all available sick leave and all short-term disability leave prior to being eligible for unpaid leave. All paid and unpaid leave taken pursuant to this Policy will run concurrently with FMLA leave.
- C. An employee who takes FMLA leave under this Policy for the serious

²⁰ See 29 USC § 2614(a)(4).

²¹ See 29 USC § 2614(a)(1).

²² See Policy No. PR-34 Leave. Employees are entitled to the use of 5 days of family sick leave per year. After more than 3 consecutive days off for this reason, the County requires a written statement from the family member's physician which states the necessity for an employee's leave. The employee must provide the physician's written statement to the Department of Human Resources by the end of the pay period in which the leave occurred.

health condition of a family member must use all available family sick leave,²³ all personal leave, and all vacation leave, prior to being eligible for unpaid leave. All paid and unpaid leave taken pursuant to this Policy will run concurrently with FMLA leave.

The County will permit an employee taking FMLA leave for a family member's serious health condition, as certified by a physician, to use available sick leave if the employee completes and returns the DOL's Certification of Health Care Provider for Family Member's Serious Health Condition (Family and Medical Leave Act) (Form WH-380-F) which is available online at <https://www.dol.gov/whd/forms/WH-380-F.pdf> or upon request from the Department of Human Resources. If this form is not completed and returned to the Department of Human Resources, the employee will be granted family sick leave totaling 5 days pursuant to County policy.²⁴

- D. An employee who takes FMLA leave under this Policy for a qualifying military exigency must use all available personal leave and all vacation leave prior to being eligible for unpaid leave. All paid and unpaid leave taken pursuant to this Policy will run concurrently with FMLA leave.
- E. An employee who takes FMLA leave under this Policy for military caregiver purposes must use all available family sick leave, all personal leave, and all vacation leave, prior to being eligible for unpaid leave. All paid and unpaid leave taken pursuant to this Policy will run concurrently with FMLA leave.

The County will permit an employee taking FMLA leave for a family member's serious health condition, as certified by a physician, to use available sick leave if the employee completes and returns the DOL's Certification of Health Care Provider for Family Member's Serious Health Condition (Family and Medical Leave Act) (Form WH-380-F) which is available online at <https://www.dol.gov/whd/forms/WH-380-F.pdf> or upon request from the Department of Human Resources. If this form is not completed and returned to the Department of Human Resources, the employee will be granted family sick leave totaling 5 days pursuant to County policy.²⁵

IX. INTERMITTENT LEAVE OR REDUCED WORK SCHEDULE²⁶

- A. An employee may take FMLA leave in 12 consecutive weeks or intermittently (i.e., in separate blocks of time caused by a single qualifying event) or on a reduced leave schedule (by reduction of working hours per

²³ See Policy No. PR-34 Leave and Footnote 22 of this Policy.

²⁴ See Policy No. PR-34 Leave and Footnote 22 of this Policy.

²⁵ See Policy No. PR-34 Leave and Footnote 22 of this Policy.

²⁶ See 29 CFR § 825.202.

work week or hours per work day) under certain circumstances. In all cases, FMLA leave may not exceed a total of 12 work weeks over a 12-month period or, in military caregiver cases, a total of 26 work weeks over a 12-month period.

- B. The County may temporarily transfer an employee to an available alternative position,²⁷ for which the employee is qualified, with equivalent pay and benefits, under any one of the following:
1. If the alternative position would better accommodate the employee's intermittent or reduced work schedule; or
 2. In instances where leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth; or
 3. For placement of a child with the employee for adoption or foster care.
- C. For the birth, adoption, or placement with the employee of a child in foster care, the County and the employee must determine a mutually agreeable work schedule before the employee may take the intermittent leave or begin a reduced work schedule.
- D. If the employee is taking FMLA leave for the serious health condition of the employee or the employee's family member, the employee should try to reach agreement with the County before taking intermittent leave or working a reduced schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary. The County may require documentation from a medical service provider to support the employee's need for leave.

X. MEDICAL CERTIFICATION OF SERIOUS HEALTH CONDITION OF EMPLOYEE OR EMPLOYEE'S FAMILY MEMBER²⁸

- A. The County requires medical certification of the serious health condition of an employee or an employee's family member. An employee must provide the certification or a reasonable explanation for delay within 15 days of receipt of the County's request for medical certification. An employee's failure to provide the requested certification may result in a denial of continuation of FMLA leave. In the case of an employee's serious health condition, medical certification must be provided using the DOL's Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act) (Form WH-380-E) which is

²⁷ See 29 CFR § 825.204.

²⁸ See 29 CFR §§ 825.305 and 825.306.

available online at <https://www.dol.gov/whd/forms/WH-380-E.pdf> or upon request from the Department of Human Resources. In the case of the serious health condition of an employee's family member, medical certification must be provided using the DOL's Certification of Health Care Provider for Family Member's Serious Health Condition (Family and Medical Leave Act) (Form WH-380-F) which is available online at <https://www.dol.gov/whd/forms/WH-380-F.pdf> or upon request from the Department of Human Resources.

- B. Upon receipt of a completed medical certification, the Department of Human Resources may directly contact the health care provider of the employee or the employee's family member for authentication or clarification purposes.²⁹ The County will not use the employee's immediate supervisor for this contact. Before the County directly contacts the health care provider, the employee will be given the opportunity to resolve any deficiencies in the medical certification. Pursuant to HIPAA medical privacy rules, as amended from time to time, the County will obtain the permission of the employee or the employee's family member for the necessary permission to clarify individually identifiable health information with the health care provider.
- C. The County retains the right to request the opinion of a second health care provider if the County finds reason to question the certification. If the County requires the opinion of a second health care provider, the County will select the health care provider to give the second opinion and will pay the cost therefor. If a conflict arises between the original certification and the second opinion, the County will require the opinion of a third health care provider to resolve the conflict. The County and the employee will select a mutually agreeable third health care provider, and the County will pay the cost therefor. The third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the acquisition of the second and third opinions. The County may deny FMLA leave to an employee if the employee or the employee's family member refuses to release relevant medical records and information to the health care providers designated to provide second or third opinions or to otherwise refuse to cooperate in the health care providers' review process of the original certification.

XI. CERTIFICATION OF QUALIFYING EXIGENCY FOR MILITARY FAMILY LEAVE OR SERIOUS INJURY OR ILLNESS OF COVERED SERVICE MEMBER³⁰

The County requires certification of the qualifying exigency for military family leave. The County also requires medical certification of the serious injury or

²⁹ See 29 CFR § 825.307.

³⁰ See 29 CFR §§ 825.309 and 825.310.

illness of a covered service member. An employee must provide the certification or a reasonable explanation for delay within 15 days of receipt of the County's request. An employee's failure to provide the requested certification may result in a denial of continuation of FMLA leave. The certification of a qualifying exigency must be provided using the DOL's Certification of Qualifying Exigency For Military Leave (Family and Medical Leave Act) (Form WH-384) available online at <https://www.dol.gov/whd/forms/WH-384.pdf> or upon request from the Department of Human Resources. The medical certification of a covered service member's serious injury or illness must be provided using the DOL's Certification for Serious Injury or Illness of a Current Servicemember—for Military Family Leave (Family and Medical Leave Act) (Form WH-385) available online at <https://www.dol.gov/whd/forms/WH-385.pdf> or upon request from the Department of Human Resources.

XII. RECERTIFICATION OF SERIOUS HEALTH CONDITION OF EMPLOYEE OR EMPLOYEE'S FAMILY MEMBER³¹

Generally, the County may request recertification of the serious health condition of an employee or the employee's family member no more frequently than every 30 days. The County may request recertification in less than 30 days under the following:

- A. If the employee requests an extension of the leave;
- B. If circumstances described by the previous certification have changed significantly;
- C. If the County receives information that casts doubt upon the employee's stated reason for the needed leave or the continuing validity of the certification.

The County may provide the health care provider of the employee or the employee's family member with the employee's attendance records and inquire whether the employee's need for leave is consistent with the certified serious health condition. The employee is obligated to participate and cooperate in the recertification process to the same extent as the certification process.

XIII. PROCEDURE FOR REQUESTING FMLA LEAVE³²

- A. All requests for FMLA leave must be made verbally or in writing to the County's Benefits Manager. Within 5 days of receipt of an employee's request for FMLA leave, the Benefits Manager will complete and provide the employee with the DOL's Notice of Eligibility and Rights & Responsibilities (Family and Medical Leave Act) (Form WH-381).

³¹ See 29 CFR § 825.308.

³² See 29 CFR § 825.300.

- B. When the need for FMLA leave is foreseeable,³³ an employee must provide the County with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice to the Benefits Manager of the need for FMLA leave either the same day or the next business day. When the need for FMLA leave is not foreseeable,³⁴ an employee must comply with the County's usual and customary notice and procedural requirements applicable to requesting such leave.

XIV. DESIGNATION OF FMLA LEAVE³⁵

- A. Within 5 business days after the employee has provided sufficient information for the County to make a determination, the Benefits Manager will complete and provide the employee with a written response to the employee's request for FMLA leave in the form of the DOL's Designation Notice (Family and Medical Leave Act) (Form WH-382).
- B. If the employee does not provide sufficient information for the County to make a determination, the County will not designate the employee's requested leave as FMLA leave. However, the County may keep an accounting of such leave for retroactive designation as FMLA leave if the employee provides sufficient information for the County to make such a designation in the future.

XV. INTENT TO RETURN TO WORK FROM FMLA LEAVE

On a nondiscriminatory basis which takes into account all of the relevant facts and circumstances related to an employee's leave situation, the County may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

³³ See 29 CFR §§ 825.302 and 825.304.

³⁴ See 29 CFR §§ 825.303 and 825.304.

³⁵ See 29 CFR § 825.301.

