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PERSONNEL POLICY MANUAL

FAMILY AND MEDICAL LEAVE

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- A. Family and medical leave is a leave of absence, taken for specified medical reasons, during which the Employer shall maintain the employee's health insurance in the same manner as if the employee remained in active pay status. During the leave, however, employees must continue to pay their share of the premium.
- B. Eligibility: Employees who have been employed for at least 12 months and who have completed at least 1,250 hours of service with the Employer during the 12 month period immediately preceding the commencement of leave shall be eligible for family and medical leave as provided herein. Periods of leave such as vacation, sick leave, unpaid leave, FML, etc. do not count toward the 1250 hours of actual service.
- C. Employees Not Covered: The following employees are not entitled to family and medical leave: elected officials; personal staff of elected officials; unclassified, policy-making appointees; immediate legal advisors to elected officials; unclassified employees of the legislative body; independent contractors; etc.
- D. Entitlement to Leave: Eligible employees shall be entitled to a total of 12 workweeks of family and medical leave during the 12 month period measured forward from the date the employee's first family and medical leave began. Leave may be taken for the following reasons:
1. birth of a child of the employee and to care for a newborn child;
 2. placement of a child with the employee by way of adoption or foster care;
 3. to care for the spouse, child, parent, or one who stood in place of a parent of the employee, if that person has a serious health condition; or
 4. because of a serious health condition that makes the employee unable to perform the essential functions of the employee's position.
 5. Because of any qualifying exigency arising out of the fact that the spouse, or a son, or a daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.
- E. Use of Leave: Employees may be required to use all accrued vacation, holidays, sick leave (if applicable), and other paid leave including Workers' Compensation and compensatory time, prior to being granted an unpaid family and medical leave. The

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combined period of leave, including paid leave and unpaid family and medical leave shall not exceed the total of 12 workweeks during the 12 month period measured forward from the date the employee's family and medical leave began. The Employer will not designate short-term absences (one [1] to five [5] days) that qualify as an FML-qualifying event. However, the Employer will designate and require the employee to use all accrued vacation, holidays, sick leave, Workers' Compensation, and other paid leave for long-term absences (exceeding five [5] days). In other words, family and medical leave and paid leave for conditions that qualify under the FML run concurrently. The entire 12 week FML is not tacked onto the end of the paid leave, just the remaining portion after the paid leave time is subtracted.

- F. Expiration of Entitlement: The entitlement to leave for a birth or placement of a son or daughter shall expire at the end of the 12-month period beginning on the date of such birth or placement.

- G. Exhaustion: In the event of the continuation, reoccurrence, or onset of a serious health condition after the employee has exhausted the 12 workweeks of leave as provided in this policy, the employee may request an unpaid leave of absence as outlined in this manual.

- H. Servicemember Family Leave: An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall only be available during a single 12-month period.

During the single 12-month period described above, an eligible employee shall be entitled to a combined total of 26 workweeks of leave.

- I. Husband and Wife: In any case in which a husband and wife, both employed by the Employer, request leave due to childbirth, adoption placement, or foster care, the aggregate number of workweeks of family and medical leave to which both employees shall be entitled shall be limited to 12 workweeks during any 12 month period. This limitation does not apply to FML taken by either spouse to care for the other spouse, a child, or parent with a serious health condition.

The aggregate number of workweeks of leave to which both that husband and wife may be limited to is 26 workweeks during the single 12-month period when the leave is:

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1. Servicemember Leave; or
2. a combination of Servicemember Leave and leave due to the birth or placement of a child as described above or to care for an employees parent with a serious health condition.

J. Intermittent/Reduced Leave:

1. Leave due to the serious health condition of the employee or the employee's spouse, child, or parent may be taken intermittently or on a reduced leave schedule when medically necessary. The Employer may require an employee taking leave in this manner for planned medical treatments to transfer temporarily to an alternative position which has equivalent pay and benefits and better accommodates the recurring periods of leave.
2. The taking of leave intermittently or on a reduced leave schedule shall not result in a reduction in the total amount of leave to which the employee is entitled in accordance with this policy.
3. Leave due to the birth or placement with the employee of a child shall not be taken on an intermittent or reduced leave schedule which would reduce the usual number of hours per workweek or per workday.

K. Seniority: An employee granted family and medical leave shall continue to accrue seniority during the period of such leave provided the employee follows the proper procedures for requesting such leave and returns to work at the expiration of the approved leave period.

L. Restoration: Any eligible employee who takes leave hereunder shall be entitled, on return from such leave, to be restored to the position held by the employee when the leave commenced, or to a similar position of equivalent pay and benefits. Where the employee is returning from unpaid leave, the Employer may require that the employee's physician certify that the employee is able to resume work as a condition of return to employment. The Employer may require that the employee's physician certify that the employee is able to perform the essential functions as a condition of return to employment.

M. Failure to Return:

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1. If the employee fails to return from the leave, the employee shall reimburse the County for the total insurance premium paid by the County unless the failure to return is due to:
 - a. continuation, recurrence, or onset of a serious health condition; or
 - b. other circumstances beyond the employee's control.

In such a case, the Employer may require medical certification. If an employee fails to provide certification or an adequate excuse, the employee shall be liable for the total insurance premium paid by the County.

2. If an employee does not report to work or request and receive further approved leave after the applicable family and medical leave expires, the employee will be absent without leave and may be subject to disciplinary action.

N. Records: The Employer shall maintain the following records for three (3) years:

1. employee wages records;
2. dates of family and medical leave taken (including paid leave taken);
3. hours of family and medical leave, if intermittent or reduced leave is taken;
4. copies of all notices given to employees;
5. copies of all documents describing benefits, policies, and practices affecting family or medical leave;
6. copies of employee requests for family and medical leave;
7. records of the Employer's and employee's health insurance payments;
8. records of any disputes between the Employer and employee over designation of family and medical leave;
9. records of medical certification of employees or their family members shall be kept confidential as they are "confidential medical records" under the law.

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O. Family and Medical Leave Definitions:

1. Spouse: husband and wife; however, common-law marriages after October 10, 1991, have been abolished by law. Unmarried domestic partners do not qualify for FML to care for their partner.
2. Parent: the biological parent or person standing in place of a parent to the employee when the employee was a child. "In-laws" are not included.
3. Child: a biological, adopted, foster, or stepchild; a legal ward; or a child of a person who is standing in loco parentis, who is under 18 years of age or 18 years of age or older and incapable of self-care because of a mental or physical disability.
4. Serious Health Condition: an illness, injury, impairment, or physical or mental condition that involves a period of incapacity or treatment that requires absence from employment for more than three (3) calendar days plus "two (2) visits to a health care provider." The two (2) visits must occur within thirty (30) days of the beginning of the period of incapacity and the first visit to a health care provider must occur within seven (7) days of the first day of incapacity;

any in-patient care (i.e. overnight stay) in a hospital, hospice, or other residential medical care facility;

any period of incapacity due to pregnancy or for prenatal care;

any period of incapacity due to a chronic serious health condition;

any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, if the employee (or family member) is under the continuing supervision of (but not necessarily receiving active treatment by) a health care provider; or

any period of absence to receive multiple treatments by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that likely will result in a period of incapacity of

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more than three (3) consecutive calendar days in the absence of medical intervention or treatment.

5. Health Care Provider: either (1) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or (2) any other person determined by the Secretary of State to be capable of providing health care services.
6. Intermittent Leave: leave taken in separate blocks of time due to a single qualifying reason.
7. Reduced Leave Schedule: leave that reduces an employee's usual number of working hours per workweek or workday.
8. Foster Care: placement of a child with the employee through a formal agreement for substitute care requiring state action, rather than an informal arrangement to take care of another child.
9. Active Duty: The term “active duty” means duty under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.
10. Contingency Operation: The term “contingency operation” has the same meaning given such term in section 101(a)(13) of title 10, United States Code.
11. Covered Servicemember: The term “covered servicemember” means a member of 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.
12. Outpatient Status: The term “outpatient status,” with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to:
 - a. a military medical treatment facility as an outpatient; or
 - b. a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

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13. Next of Kin: The term “next of kin,” used with respect to an individual, means the nearest blood relative of that individual.
14. Serious Injury or Illness: The term “serious injury or illness,” in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.
15. Qualifying Exigency: The term includes short notice deployment, military events, child care and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities negotiated between employers and employees.

PROCEDURE

- A. General Notice: The Employer shall post written notice of employees' rights and ability to file a complaint.
- B. Designation of Paid Leave: If an employee requests paid leave for a long-term absence (more than five [5] days) that also qualifies as family and medical leave, the Employer shall notify the employee in writing that the paid leave will count toward their family and medical leave.
 1. Eligibility notice: Within five (5) business days after an employee requests FMLA leave or the employer determines that the leave may be FMLA-qualified; the employer must notify the employee of his or her right to take FMLA leave. If the employer determines that the leave is not covered by the FMLA, the notice must inform the employee of that fact and provide at least one reason for the determination. In addition to the Notice of Eligibility, the Employer will provide the employee with a Notice of “Rights and Responsibilities.”
 2. Designation notice: Within five (5) business days, the Employer must notify an employee whether or not an employee’s leave has been designated as FMLA leave.

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C. Personal Notice: Upon request for family and medical leave or upon determination that long-term paid leave constitutes family and medical leave, the Employer will provide the employee with detailed written notice of:

1. the Employer's expectations and policy;
2. the employee's rights and obligations (including the amount of insurance premium that must be paid);
3. the consequences of an employee's non-compliance;
4. the leave that will be counted against the employee's annual entitlement and how it is measured;
5. the requirements regarding medical certification.

This notice may be provided by furnishing a copy of this policy, the request form, and other relevant information to the employee. The Employer will also provide notice to employees on family and medical leave of any policy change(s).

D. Employee's Notice Responsibility: Eligible employees shall follow the employer's usual and customary procedures for reporting an absence, absent unusual circumstances. Eligible employees requiring family and medical leave shall notify the Employer not less than 30 days prior to the date such leave is to begin by completing a written application for family and medical leave. However, where the need for leave is not foreseeable 30 days in advance, the employee shall complete an application and provide as much advance notice as practicable. Leave forms shall be submitted to the employee's immediate supervisor. Where an employee has no valid excuse for a delay in notice, the Employer may delay the unpaid leave until 30 days after the notice has been received.

E. Initial Certification:

1. Employees must provide the Employer with certification of the condition from a health care provider in cases involving serious health conditions, and attach the certification to the Application for Leave form.
2. Upon receipt of the certification, the Employer may, at its expense, require the employee to obtain a second opinion from a health care provider selected by

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the County. The County will not seek additional information from the initially certifying practitioner.

3. If the second opinion differs from the first, the Employer may, at its expense, require the employee to submit to a third examination by a health care provider jointly selected by the County and the employee. This third opinion shall be final and binding.
4. If the certification is insufficient, the Employer must indicate the precise information lacking and allow the employee one (1) week to provide additional information.

F. Subsequent Certification for Serious Health Condition:

1. 30-day rule. The Employer may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless paragraphs (2) or (3) of this section apply.
2. More than 30 days. If the medical certification indicates that the minimum duration of the condition is more than 30 days, the Employer must wait until that minimum duration expires before requesting a recertification, unless paragraph (3) of this section applies. For example, if the medical certification states that an employee will be unable to work, whether continuously or on an intermittent basis, for 40 days, the Employer must wait 40 days before requesting a recertification. In all cases, the Employer may request a recertification of a medical condition every six months in connection with an absence by the employee. Accordingly, even if the medical certification indicates that the employee will need intermittent or reduced schedule leave for a period in excess of six months (*e.g.*, for a lifetime condition), the Employer would be permitted to request recertification every six months in connection with an absence.
3. Less than 30 days. The Employer may request recertification in less than 30 days if:
 - a. The employee requests an extension of leave;

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meeting (such as the name, title, organization, address, telephone number, fax number, and e-mail address) and a brief description of the purpose of the meeting.

- H. Certification for Covered Servicemember Leave: When leave is taken to care for a covered servicemember with a serious injury or illness, the Employer may require an employee to obtain a certification completed by an authorized health care provider of the covered servicemember.

- I. Employee's Failure to Pay Insurance Premium: Upon commencement of FMLA leave, the Employer shall continue the employee's health insurance as if the employee was not on leave. However, the Employer's obligation shall cease if the employee is more than 30 days late in tendering his/her share of the premium, unless COBRA has been elected. In such a case, the Employer shall provide the employee written notice 15 days prior ceasing the premium payment by mail.

Original Adoption Date: _____ Revision Date: _____