

Bargaining Unit employees should review their appropriate Collective Bargaining Agreement (CBA) to determine if this policy applies to them. In case of a conflict between the applicable CBA and these policies, the provision in the CBA controls.

Policy No.: 7-6

Effective: 7/10/2012

Revision No.: 5

Review Date: 7/10/2013

Family and Medical Leave

OVERVIEW: This policy describes the provisions for granting family and medical leave in accordance with the Family and Medical Leave Act (FMLA) of 1993.

SCOPE: This policy applies to all classified and executive service employees of the Board of County Commissioners.

PROVISIONS:

1. **General Rule.** Family and medical leave shall be granted in accordance with the Family and Medical Leave Act (FMLA) of 1993 and the revisions to the regulations approved in 2008.
 - a. Any related area not addressed in these policies shall be governed by the federal regulations.
2. **Eligibility.** Employees are eligible for FMLA leave if they have been employed by the County for a total of 12-months and have worked at least 1,250 actual hours, including overtime hours, during the 12-month period immediately preceding the commencement of leave.
 - a. Total number of months employed by the County need not have been consecutive and will include any employment during the past seven years, whether temporary or permanent.
3. **Leave Entitlement.** Employees are entitled to up to 12 workweeks of regular FMLA leave within a 12-month period.
 - a. The 12-month period is measured forward from the date the employee's first FMLA leave begins.
 - b. For the birth of a child or placement of a child with the employee for adoption or foster care, the 12-month period begins on the date of birth or placement; however, this does not constitute additional leave entitlement beyond the 12-week entitlement already in place.
 - c. In any case in which both a husband and wife are employed by the County and are entitled to leave under this policy, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12 month period, if such leave is taken for reasons listed in Section 4a, the birth of the employee's child(ren); b, the care of the newborn child(ren); c, the placement of child(ren)for adoption or foster care in the home of the employee; d, the care of the newly placed child(ren); and e, the care of the employee's spouse, son, daughter or parent with a serious health condition. However, both

the mother and father may take up to 12 weeks of leave each to care for a newborn child with a serious health condition.

- d. The aggregate number of workweeks of leave when both husband and wife are employed by the County, they may be entitled to under Section 4 below, may be limited to 26 workweeks during the single 12 month period described in 4 (h) below if the time taken is for leave under either subsection 4 (h) or a combination of leave under Section 4 (a-g) and leave described in subsection 4 (h).
 - e. FMLA leave includes vacation, sick, compensatory and leave without pay and is not to be used as an additional leave.
 - f. The leave may be taken consecutively, intermittently or on a reduced leave schedule, meaning a reduction in hours worked per week/pay period.
 - g. The employee will be required to use accrued sick leave prior to commencement of unpaid leave in accordance with applicable policies in the Board of County Commissioners' Employee Policies or the Collective Bargaining Agreement.
 - h. In order to receive FMLA leave to care for a pregnant woman, the father of the unborn child must be the woman's spouse.
4. **Reasons for Entitlement.** Employees may take FMLA leave for the following reasons:
- a. The birth of the employee's child(ren) (See definition of "Child/Son/Daughter" for FMLA childcare leave purposes, in the Definitions section of these policies.),
 - b. The care of the newborn child(ren), (See definition of "Child/Son/Daughter" for FMLA childcare leave purposes, in the Definitions section of these policies.),
 - c. The placement of child(ren) for adoption or foster care in the home of the employee (See definition of "Child/Son/Daughter" for FMLA childcare leave purposes, in the Definitions section of these policies.),
 - d. The care of the newly placed child(ren) (See definition of "Child/Son/Daughter" for FMLA childcare leave purposes, in the Definitions section of these policies.),
 - e. The care of the employee's spouse, son, daughter or parent with a serious health condition (See definition of "Child/Son/Daughter" for FMLA childcare leave purposes, in the Definitions section of these policies.), or
 - f. A serious health condition that makes the employee unable to perform one or more of the essential functions of his or her job. A serious health condition is defined as an illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, residential care facility or by continuing treatment by a health care provider or hospice. Continuing treatment is defined as receiving treatment two times within 30 days of the first day of incapacity. The employee must see the health care provider within seven days of the first day of incapacity and the first visit must be in person. A regimen of continuing treatment like prescription drugs may count as continuing treatment.
 - g. Qualifying Exigency arising out of the fact that the employee's spouse, son, daughter, or parent, who is active duty military, or who is in the Reserves or National Guard, has been notified of an impending call or order to active duty in the Armed Forces in a foreign country. A qualifying exigency is defined as :1. Short notice deployment (a call/order to active duty seven days prior to date of deployment limited to seven calendar days of leave beginning on the date the military member is notified of deployment); 2. Military activities related to call to active duty; 3. Child care and school activities, e.g. arrange for alternative child

care, enroll child in new school or day care; 4. Make or update financial and legal arrangements; 5. Counseling (non-medical); 6 Rest and recuperation (limited to five days per leave, up to 12 weeks in a 12 month period, to spend with military member on short term leave); 7. Post deployment activities, defined as up to 90 days following termination of covered active duty status; and 8. Additional activities that must be agreed to by both employer and employee. Generally there must be a relationship between the reason(s) for leave and the covered active duty or call to covered active duty.

- h. Military Caregiver Leave - Subject to meeting the certification requirements, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 workweeks of leave during a 12 month period to care for the service member with a serious injury or illness incurred in the line of duty on active duty. For purposes of Military Caregiver Leave, the covered service member is defined as a current member of the Armed Forces (includes National Guard or Reserves), or a member of the aforementioned but on the temporary disability retired list, in outpatient status or undergoing medical treatment, recuperation or therapy for a serious injury or illness in the line of active duty (or had an existing injury or illness aggravated in the line of active duty) and who was a member of the Armed Forces (including a member of the national Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy for an illness or injury. The illness or injury could manifest itself before or after the individual became a veteran. For purposes of the Military Caregiver Leave, next of kin is defined as: covered service member's spouse, parent, son, daughter, blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles and first cousins. The leave described in this paragraph shall only be available during a single 12 month period, with one 12 month leave per covered service member, per injury.
- i. During the single 12 month period described in "h" above, an eligible employee shall be entitled to a combined total of 26 workweeks of leave for the reasons of entitlement listed in Section 4. Nothing in this paragraph shall be construed to limit the availability of leave under Section 4 (a) through (g) above, during any other 12 month period.

5. Notice

- a. When the need for leave is foreseeable, the employee must give at least 30 days advance notice before the FMLA leave begins.
- b. In any case in which the necessity for leave under Section 4 (g) above is foreseeable, the employee shall provide such notice to the employer as is reasonable and practicable.
- c. If the need for leave is not foreseeable, notice must be given as soon as possible.
- d. Upon receipt of an employee's request for FMLA leave, the County will notify the employee as to whether or not the leave qualifies for designation as FMLA leave.
 - i. This notification will be made within five working days unless further documentation is required.

- e. In the event that the County becomes aware that an employee's absence is due to an FMLA-qualifying reason, the County may designate the leave as FMLA leave even though the employee has not requested it.
 - i. The employee will be notified within five working days unless further documentation is required.
- 6. **Medical Leave Certification Requirements.** The County will require a medical certification statement from the health care provider (a doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist and chiropractor [with limitations]; nurse practitioner, nurse-midwife and clinical social worker; Christian Science practitioner; and any health care provider from whom the County or the group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.) of the person with the medical condition for the following reasons:
 - a. For support of a request for leave to care for a family member (Certification of health Care Provider for Family Member's SHC - Form #WH-380-F).
 - b. A serious health condition of the employee (Certification of the Health Care Provider for Employee's SHC - Form #WH-380-E),
 - c. For the approval of a leave extension (Certification of Health Care Provider for Family Member's SHC - Form #WH-380-F or Certification of the Health Care Provider for Employee's SHC - Form #WH-380-E),
 - d. For support of a request for a chronic condition. The employee must visit a health care provider at least twice a year. (Certification of Health Care Provider for Employee's SHC - Form #WH-380-E or Certification of Health Care Provider for Family Member's SHC - Form #WH-380-F),
 - e. Exigency Leave - A copy of the service member's orders or other military documentation, showing the service member's call to active duty and expected dates of active duty service, will be required once for each call to service. A statement or description of appropriate facts regarding the qualifying exigency for which FMLA is requested, signed by the employee, will be required for each qualifying exigency leave. (Certification of Qualifying Exigency for Military Family Leave - Form #WH-384),
 - f. Military Caregiver Leave - the employee will be required to provide a certification form from the service member's authorized health care provider. (Certification for Serious Injury or Illness of Covered Service member Form #SH-385).
- 7. **Second and Third Opinions.** When there is reason to question a medical certification, the County may also require, at its own expense, obtain a second opinion about the employee with the medical condition, from a health care provider chosen by the County.
 - b. If the first two medical opinions do not agree, the County may require, at its own expense, a third opinion from a health care provider mutually chosen by the County and the employee.
 - c. The third opinion shall be binding.
- 8. **Fitness-for-Duty.** A fitness-for-duty report from the employee's health care provider may be required prior to resuming work if the absence is due to the employee's serious

health condition.

9. **Continuation of Health Benefits**

- b. The County shall continue health and life insurance coverage and payments of its portion of the premium under the same terms that the coverage would have been provided had the employee not taken the leave.
- c. The employee is responsible for payments of the employee's portion of group insurance payments under the same terms that the coverage would have been provided had the employee not taken the leave.
- d. If the employee voluntarily fails to return to work after the approved leave has expired, the employee will be required to reimburse the County for its portion of all of the group insurance premiums paid on the employee's and the employee's dependents' behalf during the unpaid portion of the leave.

10. **Seniority.** Accumulation of seniority and leave accruals during unpaid leave shall be in accordance with applicable policies of the Board of County Commissioners' Employee Policies or the Collective Bargaining Agreement.

11. **Reinstatement.** Employees returning from FMLA leave shall be reinstated to the same or equivalent position with no loss of pay or benefits accrued prior to the leave or other terms and conditions of employment.

- a. If an employee's leave exceeds the statutory limit of 12 weeks of leave, reinstatement rights may be forfeited.

12. **Multiple Conditions.** Employees who have the appropriate certifications on file with the HR Office supporting multiple FMLA conditions will be required to indicate on all leave request documents which condition they are utilizing leave for. The Human Resources Office will assign each of the FMLA conditions a letter code for use on the leave request documents.

13. **Reasonable Break Time for Nursing Mothers.** The County will provide a reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk. The County will provide a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, for the nursing mother.

14. **Enforcement.**

- a. An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.
- b. FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.
- c. FMLA Section 109 (29 U.S.C. subsection 2619) requires FMLA covered employers to post notice. Regulations 29 C.F. R. Subsection 825.300 (a) may require additional disclosures.

County Manager

County Attorney