

<b>DOUGLAS COUNTY SHERIFF'S OFFICE</b>		<b>Policy and Procedure</b>
<b>Employee Leave and Compensation</b>		<b>P&amp;P-L-106</b>
<b>Leave of Absence (FMLA, Medical Leave Status, County Medical Leave and Personal Leave)</b>		
Effective Date: 02-22-23 Supersedes: 06-01-22	Approval: Sheriff	Number of Pages: 10
References: DC Personnel Guideline 10.13, FMLA of 1993, P&P-L-101	Reevaluation Date: Annually	Standards: CALEA LE 22.1.2

**I. POLICY**

In the event a regular employee is unable to perform the essential functions of their job as a result of a non-work-related injury or illness (including pregnancy), the employee may be eligible for short and long-term disability leave, as well as Medical Leave Status.

Employees on leave due to their own or a family member's serious health condition may also be entitled to leave under the Family and Medical Leave Act.

**II. PROCEDURE TO START A MEDICAL LEAVE OF ABSENCE:**

When a member needs to request a medical leave of absence (LOA), the following procedure will take place:

- Member notifies their supervisor and emails [DCSOLOA@dcsheriff.net](mailto:DCSOLOA@dcsheriff.net) to request a leave of absence.
- Professional Standards responds to the email request with an electronic leave of absence packet that may include the following:
  - Cover email explaining the paperwork included in the electronic packet as well as due dates for the various forms
  - Q & A Sheet for Leaves of Absence
  - Leave of Absence Request Form
  - Medical Certification Form for either employee or family member (if applicable)
  - Job Description if leave is for employee (if applicable)
  - Notification of Eligibility and Rights for leave of absence (if applicable)

**EMPLOYEE TASKS:**

- The member will complete the LOA form and email it back to [DCSOLOA@DCSHERIFF.NET](mailto:DCSOLOA@DCSHERIFF.NET), **within 5 business days of receipt.**
- The member will forward the medical certification form and job description (if the leave is for the employee) to the attending physician. The physician will complete the certification form **within 15 days as required by FMLA regulations**, and fax back to Professional Standards at 303-660-9371.
- The member will keep their immediate supervisor and Professional Standards updated on return-to-work dates, etc.

### **PROFESSIONAL STANDARDS TASKS:**

- When the completed and signed LOA Request Form is received back, Professional Standards will forward a copy of the completed LOA form and completed Notice of Eligibility, to Douglas County Human Resources at [DOUGLASHRLOA@DOUGLAS.CO.US](mailto:DOUGLASHRLOA@DOUGLAS.CO.US).
- When the completed medical certification is received back, Professional Standards will forward a copy to Douglas County Human Resources at [DOUGLASHRLOA@DOUGLAS.CO.US](mailto:DOUGLASHRLOA@DOUGLAS.CO.US), in an encrypted email.
- Once Douglas County Human Resources has received all documents relating to the leave of absence, they will send a Designation Notice to the employee within 5 days of receipt of a completed FMLA packet.
- The Personnel Coordinator will electronically file all documents relating to the leave of absence, with access given to the Lieutenant and Captain over Personnel only.
- The Personnel Coordinator will track the FMLA time taken for employee's, by recording the FMLA time used by the employee in a rolling 12-month period.
- If the member requires services administered by Douglas County Human Resources, such as Sick Bank, Short Term Disability and Long-Term Disability, a copy of all correspondence from Douglas County Human Resources to the member will be forwarded to [DCSOLOA@DCSHERIFF.NET](mailto:DCSOLOA@DCSHERIFF.NET), to be included in the electronic medical file.

### **III. BENEFIT INFORMATION:**

#### **A. *Accrual of Benefits:***

Medical leave shall not constitute a break in service for retirement purposes. Employees will not continue to accrue sick and annual (vacation) leave while on unpaid leave, sick bank, short-term disability leave, or long-term disability leave. Employees are also not eligible for Holiday pay during this period.

#### **B. *Short-Term Disability and Elimination Period:***

There is a minimum 30 calendar day 'elimination period' in which the employee must use sick leave, vacation leave, compensatory time hours, request sick bank hours, or go on leave without pay before becoming eligible to collect short-term disability benefits. The personnel coordinator will provide information on how paid leave and family medical leave are to be used during this period. On the 31st calendar day, the employee may be eligible for short-term disability pay at 60% of the employee's current salary, up to the plan maximum, which may continue for 12 weeks from the original date of disability (based on medical necessity) and is monitored by Douglas County Human Resources Department.

#### **C. *Long-Term Disability:***

Employees who have a work-related or non-work-related medical condition and are unable to return to work after the expiration of the 12 weeks of short-term disability leave may apply for long-term disability benefits. See the personnel coordinator for details.

#### **IV. FMLA (INCLUDING MILITARY FAMILY LEAVE ENTITLEMENTS) / FAMILY CARE LEAVE ACT / NON-FMLA LEAVE / MEDICAL LEAVE STATUS / PERSONAL LEAVE INFORMATION**

##### **A. FAMILY MEDICAL LEAVE ACT (FMLA)**<LE 22.1.2e>

The County provides up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- Incapacity due to pregnancy, prenatal medical care, or childbirth.
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition;
- A serious health condition that makes the employee unable to perform the employee's job.

##### ***Military Family Leave Entitlements:***

Eligible employees with a spouse, son, daughter, or parent on active duty or called to active-duty status in the Armed Forces, National Guard, or Reserves may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

Eligible employees may also take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A covered service member is a current member of the Armed Forces, National Guard, or Reserves, who has a serious injury or illness incurred or aggravated in the line of duty or while on active duty. A covered service member also includes veterans who were members of the Armed Forces, National Guard, or Reserves at any time during the period of five years preceding the start of treatment, recuperation, or therapy.

The injury or illness must make the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. In the case of a veteran, the qualifying illness or injury must be incurred or aggravated in the line of duty and manifest itself before or after the service member became a veteran.

##### ***Benefits and Protections:***

During FMLA leave, the County maintains the employee's health coverage under any group health plan on the same terms as if the employee had continued to work. Employees must continue to pay their portion of any insurance premium while on leave. If the employee is able but does not return to work after the expiration of the leave, the employee will be required to reimburse the County for payment of insurance premiums during leave.

Upon return from FMLA leave, most employees are restored to their original or equivalent position with equivalent pay, benefits, and other employment terms. Certain highly compensated employees (key employees) may have limited reinstatement rights.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave. As with other types of unpaid leave, the employee will not accrue any vacation or sick leave during this period. Holiday, bereavement, County closure, and jury duty is not granted if on unpaid leave.

***Eligibility Requirements:***

Employees are eligible if they have worked for the County for at least 12 months, for 1,250 hours over the previous 12 months, and if they work at a work site with at least 50 employees within 75 miles.

***Definition of Serious Health Condition:***

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job or prevents a qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive full calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

***Use of Leave:***

The maximum time allowed for FMLA leave is either 12 weeks in the 12-month period as defined by the County, or 26 weeks as explained above under the heading Military Family Leave Entitlements. The County uses the 12-month rolling period measured forward from the first day of an employee's leave.

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employee's must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the County's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Employee's taking intermittent or reduced schedule leave based on planned medical treatment and those taking intermittent or reduced schedule family leave with the County's agreement may be required to, at least for the period of the leave and possibly longer if the employee's previous position has been filled, transfer to another job with equivalent pay and benefits that better accommodates that type of leave.

***Substitution of Paid Leave for Unpaid Leave:***

Under an approved leave of absence, the employee must exhaust any accrued sick leave at the beginning of the leave and may have to exhaust any accrued compensatory time and vacation during the leave, unless they are collecting workers' compensation. Once these types of paid leave are exhausted, eligible employees may be qualified for hours from the Sick Bank in accordance with the Sick Bank policy. Beginning on the 31<sup>st</sup> day of the leave, employees are eligible to apply for short-term disability if it is for their own serious health condition in accordance with the Short-Term Disability policy.

If a regular full or part-time employee is on paid leave, County contribution and appropriate benefit deductions will continue.

An employee on an unpaid family or medical leave of absence will be retained on all enrolled Douglas County benefit plans and the County contribution benefit allowance will continue. An employee on an unpaid leave must make arrangements with the Human Resources Department for payment of the employee's portion of the benefit premiums. As with other types of unpaid leave, the employee will not accrue any vacation or sick leave during this period of unpaid leave. Holiday, bereavement, County closure, and jury duty are not granted if on unpaid leave. Beginning on the 31<sup>st</sup> day of the leave, employees are eligible to apply for short-term disability if it is for their own serious health condition in accordance with the Short-Term Disability policy.

In the event an employee fails to return from unpaid family or medical leave, the employee will be liable for the premiums paid by the employer to maintain insurance coverage unless the failure to return occurs from circumstances beyond the control of the employee.

***Employee Responsibilities:***

Employees should provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days' notice is not possible, the employee must provide notice as soon as practicable and generally must comply with the County's normal call-in procedures.

Employees must provide sufficient information for the County to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions; the family member is unable to perform daily activities; the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the County if the requested leave is for a reason for which FMLA leave was previously taken or certified.

Employees also may be required to provide a certification and periodic recertification supporting the need for leave. The County may require second and third medical

opinions at the County's expense. Documentation confirming family relationship, adoption, or foster care may be required. If notification and appropriate certification are not provided in a timely manner, approval for leave may be denied. Continued absence after denial of leave may result in disciplinary action. Employees on leave should contact Human Resources at least two days before their first day of returning to work.

***County Responsibilities:***

The County will inform employees requesting leave whether the employee is eligible under FMLA. If eligible, the notice will specify any additional information required as well as the employees' rights and responsibilities. If not eligible, the County will provide a reason for ineligibility.

The County will inform an employee if leave will be designated as FMLA – protected and the amount of leave counted against the employee's leave entitlement. If the County determines that the leave is not FMLA – protected, the County will notify the employee.

***Unlawful Acts:***

FMLA makes it unlawful for the County to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

**B. *FAMILY CARE LEAVE ACT***

Douglas County provides up to 12 weeks of unpaid leave to eligible employees to care for their partners in a civil union or domestic partnership, who have serious health conditions. Generally, leave under the Family Care Act is administered consistent with FMLA regulations. Contact your supervisor or Human Resources if you need family care leave.

**C. *NON-FMLA LEAVE***

Regular full-time, regular part-time, temporary limited benefit employees may be granted a Non-FMLA Leave if they do not currently meet the FMLA "Eligibility Requirements" of having worked for the County for at least 12 months and having worked for at least 1,250 hours over the previous 12 months and working at a work site with at least 50 employees within 75 miles. Non-FMLA Leave may not exceed 12 weeks during a 12-month period, except potentially as a reasonable accommodation for an employee with a qualified disability under the parameters of the Americans with Disabilities Act (ADA) and its amendments. Potential accommodations will be determined in an interactive process between the employee and the organization.

Non-FMLA Leave is available to eligible employees for the following reasons:

- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition (as defined under FMLA regulations).
- Serious health condition (as defined under FMLA regulations) that makes the employee unable to perform the employee's job, including the employee's medical incapacity due to pregnancy, prenatal medical care, or childbirth.
- Up to 4 weeks of bonding time including but not limited to maternal and paternal bonding following childbirth, adoption and/or foster care placement. Bonding time may not exceed the 12 weeks during a 12-month limitation of Non-FMLA leave.

For Non-FMLA leave to be granted, the following conditions must be met:

- The employee must notify their supervisor and the Human Resources Department as soon as possible of the need for leave; and
- The employee applies for Non-FMLA Leave, including providing a Certification of Health Care Provider form to the Human Resources Department.

Because of the nature of our business, it is not always practical to hold a position open during a leave not covered by FMLA. In the event an employee's job is filled during a Non-FMLA Leave, an employee may be considered along with other candidates for any vacant position for which they are qualified.

***Substitution of Paid Leave for Unpaid Leave:***

Under an approved leave of absence, employees must exhaust any applicable accrued sick leave, vacation, and/or compensatory time. Once these types of paid leave are exhausted, eligible employees may be qualified for hours from the Sick Bank in accordance with the County's Sick Bank policy. Beginning on the 31<sup>st</sup> day of the leave, employees are eligible to apply for short-term disability if the leave is for their own serious health condition and in accordance with the Short-Term Disability policy. When all applicable paid leave, Sick Bank, and/or Short-Term Disability is exhausted, any remaining leave time would be unpaid.

During paid leave, the County contribution and appropriate benefit deductions will continue. In accordance with the Sick Bank and Short-Term Disability policies, employees will not accrue vacation and sick leave time and are not eligible for holiday pay during period of Sick Bank and/or Short-Term Disability use.

The following benefits will not continue during unpaid leave: vacation and sick leave accruals, holiday pay, bereavement leave, County closure, and jury duty.

An employee on unpaid leave who does not receive a paycheck during periods of Non-FMLA Leave can be retained on all enrolled Douglas County benefit plans as long as the employee makes arrangements with the Human Resources Department, in advance, to pay the employee's portion of the benefit premiums before the end of each applicable month.

In the event than an employee fails to return from leave, the employee may be liable for the premiums paid by the employer to maintain insurance coverage unless the failure to return occurs from circumstances beyond the control of the employee.

***Subsequent Eligibility for FMLA***

If an employee subsequently meets the FMLA “Eligibility Requirements” while on Non-FMLA Leave, their leave will be characterized as FMLA from the date of eligibility forward and Non-FMLA Leave will end.

**D. *MEDICAL LEAVE STATUS***

Employees who have a non-work-related medical condition and are unable to return to work after the expiration of FMLA may be moved to Medical Leave Status for a maximum of one year from the original date of the qualified medical condition, given all medical condition certification and eligibility requirements are satisfied. During this medical leave status period, the County will continue to pay the premiums for medical, dental, and vision insurance coverage (in that order) as elected by the employee for their-self and their enrolled dependents, up to the maximum contributions made by Douglas County, if applicable.

To qualify for the Medical Leave Status, the employee must be approved for LTD benefits under the County LTD plan or be a disabled individual under the ADA where leave has been determined to be a reasonable accommodation.

For the complete Medical Leave Status policy, including details regarding general exclusions, medical leave certification requirements, return to work and/or expiration of Medical Leave Status, and pay while on Medical Leave, see Douglas County Policy located on DCNet or contact the Human Resources Department.

**E. *PERSONAL LEAVE***

A Personal Leave of Absence may be granted to regular full-time, regular part-time and temporary limited benefits employees, at the discretion of the employee’s Elected Official or Director and in consultation with the Human Resources Department, if the employee and/or the reason for the absence does not qualify for any other leave. Personal Leave is not applicable to absences related to the employee’s own medical need, whether work related or not work related. Personal Leave would not normally exceed 60 days. Except for emergencies, a Personal Leave should be requested at least 4 weeks in advance.

Several factors are considered in determining whether the leave is granted:

- The workload in the department
- The employee’s performance and length of service with the County; and
- The urgency of the situation prompting the leave request

Because of the nature of our business, it is not always practical to hold a position open during a leave not covered by FMLA. In the event an employee’s job is filled



during a Personal Leave an employee may be considered along with other candidates for any vacant position for which they are qualified.

***Substitution of Paid Leave for Unpaid Leave:***

Under an approved leave of absence, employees must exhaust any applicable accrued sick leave, vacation, and/or compensatory time. Once these types of paid leave are exhausted, eligible employees may apply for hours from the Sick Bank in accordance with the Sick Bank policy. When all applicable paid leave and/or Sick Bank is exhausted, any additional leave time would be unpaid.

During paid leave, the County contribution and appropriate benefit deductions will continue. The County currently provides a County contribution for regular full-time, regular part-time, and limited benefits employees towards insurance benefits. In accordance with the Sick Bank policy, employees will not accrue vacation and sick time and are not eligible for holiday pay during periods of Sick Bank use.

The following benefits will not continue during unpaid leave: County contribution, vacation and sick leave accruals, holiday pay, bereavement leave, County closure, and jury duty.

An employee on unpaid leave who does not receive a paycheck during periods of Personal Leave can be retained on all enrolled Douglas County benefit plans as long as the employee makes arrangements with the Human Resources Department, in advance, to pay the premiums in full before the end of each applicable month.

In the event an employee fails to return from leave, the employee may be liable for the premiums paid by the employer to maintain insurance coverage unless the failure to return occurs from circumstances beyond the control of the employee.

**V. RETURN FROM MEDICAL LEAVE**

If the employee is on an approved Medical Leave Status and is released to return to work within one year from the original date of their qualified medical condition, the employee must first make a written request to the Sheriff to return to duty. The employee may be immediately reinstated if their previous position is still vacant. If an employee's previous position has been filled during the employee's absence and there is a vacant position in the same position / job title, the employee may be reinstated into the vacant position. If the employee's previous position has been filled and there are no other vacancies for which the person is qualified in the same position / job title, the employee may be terminated and may be eligible for re-hire.

**VI. RETURN FROM FMLA FOR PERSONAL INJURY, ILLNESS, MEDICAL LEAVE OR MODIFIED DUTY**

When the member is ready to return to work, they shall provide a "return to work" notice from the attending physician. This may either be a note from the attending physician, or they may use the Modified Duty Request Form.

If the member is requesting a modified duty assignment, the Modified Duty Request Form will be completed by their attending physician, detailing the restrictions of the employee. This form may either be returned to Professional Standards for processing or provided to the captain of the employee's division. The captain will determine if there is an assignment that can be offered based on the employee's restrictions. If an assignment is given, the captain will write the details of the assignment on the form and provide it back to the employee to either "accept or decline" the assignment and sign the form. This form is then forwarded to the Chief of the Division for final approval. Once the form is received back to Professional Standards, it will be uploaded to Guardian Tracker as Modified Duty Assignment, so that supervisors may see the restrictions of the employee.

Prior to reinstatement, employees also must meet return to work training certification requirements and must contact the Training Unit to evaluate the training required to return to work and ensure the correct paperwork has been received and completed.

A copy of the return-to-work form, or the Modified Duty Request Form, will be forwarded to [DOUGLASHRLOA@DOUGLAS.CO.US](mailto:DOUGLASHRLOA@DOUGLAS.CO.US) to complete their file.

By Order of the Sheriff