

Leave Benefits – Family and Medical Leave Act

Policy Number: 145

Family and Medical Leave Act and Other Parenting Leave:

FMLA Generally: Notice of Employee Rights

On February 5, 1993, President Clinton signed the Family and Medical Leave Act of 1993. It was effective August 5, 1993 and requires all employers with 50 or more employees to provide employees up to 12 weeks of unpaid leave each year for the birth or adoption of a child, for the serious health conditions of the employee, or to care for an immediate family member (child, spouse or parent) who has a serious health condition. Employees must be restored to their former or equivalent positions upon returning. Although the leave may be unpaid, an employer must continue to provide any health insurance benefits during the leave period under the same terms offered to employees not on leave. An employer may recapture any premiums paid if the employee on leave fails to return to work for reasons other than the serious health condition of the employee or family member. To be eligible for the leave, an employee must have worked for the employer for at least 12 months and must have worked at least 1,250 hours over the most recent 12-month period. An employer may refuse to grant a leave to a salaried employee who is among the highest paid 10 percent of all employees if such refusal is necessary to prevent "substantial and grievous economic injury" to the employer's operations. When possible, employees are to give a 30-day request for leave notice. The employer may require a medical certificate to support a request for leave due to the employee's or employee's family member's serious health condition, may request a second or third opinion (at employer expense) and a fitness for duty report to return to work. An employee may elect OR an employer may require an employee to substitute accrued paid leave for any part of leave provided under this Act. An employer is not required to provide paid medical or sick leave in any case where such leave would not normally be provided. For example, an employer who normally provides paid sick leave only for an employee's own illness need not permit an employee to use sick leave to care for an immediate family member.

For most employees, upon return from FMLA leave, the employee must be restored to their original or equivalent position with equivalent pay, benefits and other employment terms. The use of FMLA leave cannot result in the loss of any employment benefits that accrued prior to the start of the employee's leave (other than sick leave, vacation or other paid leave the employee used during the FMLA leave).

The FMLA makes it unlawful for any employer to interfere with, restrain or deny the exercise of any right provided under FMLA. It further prohibits employers from discriminating against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

The U.S. Department of Labor is authorized to investigate and resolve complaints of violations. An eligible employee may bring a civil action against an employer for a violation.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state laws or collective bargaining agreements, which presently require more generous leave policies. Rights provided by this Act may not be contractually waived or restricted through collective bargaining.

FMLA Eligibility and Procedures

Eligible employees may take up to 12 weeks of unpaid leave for (1) the birth or adoption of a child; (2) the serious health conditions of the employee; or (3) to care of an immediate family member (child, spouse or parent) who has a serious health condition.

For the purposes of FMLA leave, "child" is defined as a biological, adopted or foster son or daughter, stepchild, legal ward, or a child of a person standing in loco parentis who is: (a) under the age of 18 years; or (b) 18 years of age or older and incapable of self-care because of mental or physical disability.

For the purposes of FMLA leave, "parent" is defined as the biological parent of an employee or a person who stood in loco parentis to the employee when the employee was a son or daughter, as defined above.

The 12-month period shall be measured forward from the date the employee's first FMLA leave begins. The next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period.

To be eligible, the employee must have worked for the County for at least 12 months and must have worked at least 1,250 hours over the most recent 12-month period.

The employee must ordinarily notify their Department Head and the Human Resources Office at least 30 days in advance of any foreseeable leave (e.g. elective surgery).

The employee shall be required to provide a medical certification for any FMLA leave due to their own serious health condition in excess of three (3) days, or in such other cases as the Human Resources Office deems appropriate. In cases where the employee's use of FMLA leave is of an intermittent nature, a medical certification will be required verifying this fact during each 12-month period in which the employee uses FMLA leave.

The employee shall be required to provide a medical certification for any FMLA leave due to the need to care for an immediate family member in excess of three (3) days, or in such other cases as the Human Resources Office deems appropriate. In cases where the employee's use of FMLA leave to care for an immediate family member is of an intermittent nature, a medical certification will be required verifying this fact during each 12-month period in which the employee uses FMLA leave for this purpose.

Employees eligible for FMLA leave shall be required to use accumulated sick leave, vacation leave and personal leave during the FMLA leave period. Employees shall not be allowed to consecutively use paid leaves and FMLA leave. FMLA leave and other qualifying paid leave shall be used concurrently.

The Human Resources Office is responsible for completing the "Designation Notice" and "Notice of Eligibility & Rights and Responsibilities" forms in all circumstances in which an employee does qualify for leave under the FMLA, whether or not the employee specifically requests such a FMLA leave (e.g. when an employee is on sick leave which also qualifies under FMLA, when an employee is unable to request a leave due to a medical condition, etc.). The original shall be provided to the employee and a copy retained by the Human Resources Office in a "confidential medical file" for the employee, which shall be separate from the employee's personnel file. All medical certifications shall also be retained in that file.

"Fitness for duty" certification may be required, at the discretion of the Department Head/Human Resources Office. Employees shall be notified at the time their leave is granted or extended whether such certification will be required.

Child leave shall begin at a time requested by the employee, but may begin not more than twelve months after the birth or adoption, except in the case where the child must remain in the hospital longer than the mother, the leave may not begin more than six weeks after the child leaves the hospital.

School Conferences and Activities Leave

Employees may take up to 16 hours of unpaid leave in any twelve-month period to attend school conferences and classroom activities related to the employee's child if these activities cannot be scheduled during non-work hours. If the employee's child receives child-care services as defined in Minn. Stat. 256H.01, subdivision 2 or attends a pre-kindergarten regular or special education program, the employee may use the 16 hour period to attend conferences or activities related to the employee's child or to observe or monitor the program of the child, provided the activities cannot be scheduled during non-work hours. When foreseeable, the employee shall provide reasonable notice to the Department Head and schedule the meeting or activity so as not to unduly disrupt operations.

For the purposes of school conferences and activities leave, "child" is defined as an individual 18 years of age or younger or an individual under the age of 20 who is still attending a secondary school.

An employee may substitute vacation or personal leave for unpaid leave under this section.

Sick or Injured Child Care Leave

An employee may use personal sick leave benefits due to the illness or injury of the employee's child, for such reasonable periods as may be necessary for the employee to care for the child, on the same terms the employee is able to use sick leave benefits for his or her own illness or injury.

For the purposes of sick or injured child care leave, "child" is defined as an individual 18 years of age or younger or an individual under the age of 20 who is still attending a secondary school.

Employees may use sick leave to care for a seriously ill or injured adult child as provided above.

Please Note:

While on FMLA or other leave without pay, there will be no accumulation of sick or vacation leave.

If, during a leave, the County experiences a layoff and employee would have lost a position had the employee not been on leave, pursuant to the good faith operation of a bona find layoff and recall system, including a system under "Veteran's Preference" of these policies, the employee is not entitled to reinstatement in his/her former or comparable position. In such circumstances, the employee retains rights under the layoff and recall system, as if leave wasn't taken.

An employee returning from a leave of absence is entitled to return to employment at the same rate of pay the employee had been receiving when the leave commenced, plus any automatic adjustments in the employee's pay scale that occurred during the leave period. The employee returning from a leave is entitled to retain all accrued pre-leave benefits of employment and seniority, as if there had been no interruption in service, except for the actual use of sick or personal leave or vacation taken during the absence.