



**FAMILY AND MEDICAL LEAVE POLICY**

**Approved: July 31, 2018**

**Effective: August 15, 2018**

**A. OVERVIEW**

The Family and Medical Leave Act (FMLA), 29 USC § 2601, *et seq.*, entitles Eligible Employees to take up to twelve (12) weeks of unpaid, job-protected leave in a Leave Year, for any of the following reasons:

- The birth of a child and to care for the newborn child within one (1) year of birth;
- The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one (1) year of placement;
- To care for the employee’s Immediate Family Member with a qualifying Serious Health Condition;
- For the employee’s own qualifying Serious Health Condition that makes the employee unable to perform the essential functions of the employee’s job; or,
- For any qualifying exigency related to the foreign deployment of a military member who is the employee’s Immediate Family Member (Qualifying Exigency Leave).

Additionally, the FMLA entitles Eligible Employees to take up to twenty-six (26) weeks of unpaid, job-protected leave in a single Leave Year to care for a Covered Service Member with a Serious Injury or Illness, if the service member is the employee’s Immediate Family Member or Next of Kin (Military Caregiver Leave). During the single twelve (12) month period described herein, an Eligible Employee is limited to a combined total maximum of twenty-six (26) weeks of leave for any FMLA-qualifying reasons.

**B. PURPOSE**

The purpose of this policy is to describe procedures to be followed when taking leave pursuant to the FMLA.

**C. INTENT**

This policy is intended to be interpreted consistent with and subject to applicable law. It supersedes all previous policies and/or memoranda that may have been issued from time to time on subjects covered in this policy. This policy is not intended to supersede or limit the County from enforcing provisions in any applicable collective bargaining agreement. Should any provision in this policy conflict with a specific provision in the Personnel Rules, the provision(s) in this policy shall take precedence.



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**D. SEVERABILITY**

If any section or provision of this document should be held invalid by operation of law, none of the remainder shall be affected.

**E. JURISDICTION**

The Bureau of Human Resources (BHR) is authorized to develop and issue policies for the effective management of Cook County employees, pursuant to Section 44-45 of the Cook County Code.

**F. AREAS AFFECTED**

This policy applies to all County employees in the Offices under the President and/or covered by the Cook County Employment Plan.

**G. NONDISCRIMINATION**

Cook County prohibits the discriminatory application, implementation, or enforcement of any provision of this policy on the basis of race, color, sex, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status, source of income, housing, or any other protected category established by law, statute or ordinance, as provided in Section 44-53 of the Cook County Code.

**H. EMPLOYEE AND MANAGEMENT RESPONSIBILITIES**

The County's BHR Leave Coordinator (or designee) will monitor County practices to ensure compliance with, and answer questions concerning, the information presented in this policy.

If a department Manager/Supervisor acquires knowledge that an employee's absence may be for an FMLA-qualifying reason, the Manager/Supervisor should immediately notify the BHR Leave Coordinator.

All County employees have a duty to report suspicion of and/or FMLA abuse to the Office of the Independent Inspector General.

A guide to employee and management responsibilities associated with this policy is provided in Appendix A.

**I. DEFINITIONS**

The following words, terms and phrases, when used in this policy shall have the meanings ascribed to them in the FMLA unless otherwise modified, and provided in this section for convenience:



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**Certification** means a BHR or Department of Labor Form completed by the healthcare provider of the employee or the employee’s family member that supports an employee’s request for FMLA leave for the employee or family member, respectively. “Certification” may also require that the documentation received from a healthcare provider be authenticated (verification that the information was completed and/or authorized by signatory) and/or clarified (to understand what was written or the meaning of the response) by the healthcare provider.

**Concurrent Leave** means an approved FMLA absence that overlaps with and/or occurs at the same time as other leaves. An employee must qualify for FMLA before “Concurrent Leave” designations are made by the BHR Leave Coordinator.

**Continuing Treatment** means a period of Incapacity of more than three (3) consecutive calendar days combined with at least two (2) visits to a health care provider or one (1) visit and a regimen of Continuing Treatment or Incapacity due to pregnancy or due to a chronic condition. Other conditions may meet the definition of Continuing Treatment; refer to the definition of “Serious Health Condition” below.

**Cook County Code** means the Code of Cook County Ordinances that may be found at [https://library.municode.com/il/cook\\_county/codes/code\\_of\\_ordinances](https://library.municode.com/il/cook_county/codes/code_of_ordinances).

**Cook County Time and Attendance System** means the County’s time and attendance system to which employees enter attendance and/or request time off through Time Clocks, an Interactive Voice Response clock, or the web based Dashboard.

**Covered Active Duty** means (1) for a member of a regular component of the Armed Forces, duty during deployment to a foreign country, and (2) in the case of a member of the reserve component of the Armed Forces, duty during deployment to a foreign country under a call or order to active duty under a provision of applicable law.

**Covered Service Member** means (1) a current 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 in outpatient status, for a Serious Injury or Illness; or, (2) a Veteran who is undergoing medical Treatment, recuperation, or therapy, for a Serious Injury or Illness, provided that such Treatment, recuperation, or therapy occurs within five years from the date the Veteran left the Armed Forces.

**Covered Service Member Family Leave or Military Caregiver Leave** means leave available to Eligible Employees to care for a Covered Service Member with a Serious Injury or Illness.

**Eligible Employee** means an employee who (1) has worked for the County for at least twelve months (52 weeks, not necessarily consecutively); and, (2) has worked at least 1,250 hours during the Leave Year. The Cook County Time and Attendance System is the system of record for the calculation of hours.

**Immediate Family Member** means an employee’s Spouse, domestic partners, civil union partners, Parents, and Son or Daughter, as defined herein.



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**Incapacity** means the inability to work, attend school or perform other regular daily activities due to a Serious Health Condition as defined herein, Treatment therefore, or recovery therefrom.

**Intermittent Leave** means leave taken in separate blocks of time due to a single qualifying reason.

**Key Employee** means Eligible Employees whose salary places them within the top ten percent of all employees in the Offices under the President of Cook County.

**Leave Year** means a rolling 12-month period measured backward from the date the FMLA leave is commenced.

**Next of Kin of a Covered Service Member** means the nearest blood relative other than the Covered Service Member's Spouse, Parent, or child, in the following order of priority: blood relatives who have been siblings; grandparents; aunts and uncles; and first cousins, unless the Covered Service Member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of Military Caregiver Leave under the FMLA.

**Parent** means the biological, adoptive, step, or foster parent of an employee or an individual who stood in place of a Parent to the employee when the employee was under 18 years of age or incapable of self-care. "Parent" does not include the employee's parent(s)-in-law.

**Qualifying Exigency Leave** means leave available to a family member of a military member that has been notified of an impending call or order to covered active military duty, or who is already on Covered Active Duty, in the Armed Forces, including the National Guard or Reserves as defined herein, for reasons related to or affected by the family member's call-up or service. Qualifying exigencies include:

- Issue arising from a covered military member's short notice deployment within a period of seven (7) days from the date of notification;
- Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross, that are related to the active duty or call to active duty status of a covered military member;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;



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- Certain activities arising from the military member’s Covered Active Duty related to care of the military member’s Parent who is incapable of self-care, such as arranging for alternative care, providing care on a non-routine, urgent, or immediate need basis, admitting or transferring a Parent to a new care facility, and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers;
- Making or updating financial and legal arrangements to address a covered military member’s absence;
- Attending counseling provided by someone other than a health care provider for one’s self, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- Taking up to fifteen (15) calendar days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- Attending certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 (ninety) days following the termination of the covered military member’s active duty status, and addressing issues arising from the death of a covered military member, including attending the funeral; and,
- Any other event that the employee and the BHR Chief (or designee) agree is a qualifying exigency.

**Serious Health Condition** means an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient Care, or
- Continuing Treatment for a Serious Health Condition by a health care provider, which includes any one or more of the following:
  1. Incapacity and Treatment is a period of Incapacity of more than three (3) consecutive, full calendar days, and any subsequent Treatment or period of Incapacity relating to the same condition, that also involves:
    - a. Treatment two or more times, within 30 days of the first day of Incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or



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- b. Treatment by a health care provider on at least one occasion, which results in a regimen of Continuing Treatment under the supervision of the health care provider.

The requirement in paragraphs 1(a) and 1(b) of this definition of Treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person Treatment visit must take place within seven days of the first day of Incapacity.

Whether additional Treatment visits or a regimen of Continuing Treatment is necessary within the 30-day period shall be determined by the health care provider.

The term "extenuating circumstances" in paragraph 1(a) of this definition means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the 30-day period, but the health care provider does not have any available appointments during that time period.

2. Pregnancy or prenatal care. Any period of Incapacity due to pregnancy, or for prenatal care.
3. Chronic conditions. Any period of Incapacity or Treatment for such Incapacity due to a chronic Serious Health Condition. A chronic Serious Health Condition is one which:
  - a. Requires periodic visits (defined as at least twice a year) for Treatment by a health care provider, or by a nurse under direct supervision of a health care provider;
  - b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and,
  - c. May cause episodic rather than a continuing period of Incapacity (e.g., asthma, diabetes, epilepsy, etc.).
4. Permanent or long-term conditions. A period of Incapacity that is permanent or long-term due to a condition for which Treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active Treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.



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- 5. Conditions requiring multiple Treatments. Any period of absence to receive multiple Treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:
  - a. Restorative surgery after an accident or other injury; or,
  - b. A condition that would likely result in a period of Incapacity of more than three consecutive, full calendar days in the absence of medical intervention or Treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

The definition of “Serious Health Condition” does not include, unless complications arise, such things as the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc.

**Serious Injury or Illness**

- The term “Serious Injury or Illness” in the case of a member of the Armed Services (including a member of the National Guard or Reserves) means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty while on active duty in the Armed Forces) and renders the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.
- The term “serious illness or injury” in the case of a Veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) means at any time during a period described as qualifying (as defined by the Secretary of Labor), an injury or illness that was incurred by the member in the line of duty while on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a Veteran.

**Son or Daughter** means the biological, adopted, foster, stepchild or legal ward, or child of an employee standing *in loco parentis* who is either under 18 years of age, or older than 18 and incapable of self-care due to a mental or physical disability as defined under the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, for whom the employee has actual day-to-day responsibility for care. For purposes of Qualifying Exigency Leave and/or Military Caregiver Leave, the child may be of any age.

**Spouse** means individuals in lawfully recognized marriages, including civil union and domestic partnership partners. For purposes under this policy, “Spouse” includes marriages that were validly entered into outside of the United States if they could have been entered into in at least one state.



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**Treatment** means examination(s) to determine if a Serious Health Condition exists and evaluation(s) of the condition. “Treatment” does not include routine physical examinations, eye examinations, or dental examinations. A “regimen of Continuing Treatment” includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. The taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of Continuing Treatment for purposes of FMLA leave.

**Veteran** means a person who served in the active military, naval, air service, National Guard, or Reserves and who was discharged or released therefrom under conditions other than dishonorable.

**J. POLICY AND PROCEDURES; FMLA LEAVE**

Cook County provides unpaid, job-protected FMLA leave of up to twelve (12) weeks in a twelve (12) month period, to Eligible Employees who have complied with the applicable requirements. With respect to Military Caregiver Leave, Cook County provides unpaid, job-protected FMLA leave of up to twenty-six (26) weeks in a single twelve (12) month period, to employees who have complied with the applicable requirements, for a combined total maximum of twenty-six (26) weeks of leave for any FMLA qualifying reasons, during the single twelve (12) month period described herein.

**1. ELIGIBILITY**

To be eligible for FMLA leave, an employee must have worked for the County for at least twelve months (52 weeks, not necessarily consecutively), and at least 1,250 hours during the Leave Year.

- a. *Months Worked.* To calculate the months an employee has worked, employment more than seven (7) years ago is counted only if the break in service is: (i) due to an employee’s fulfillment of military obligations, or (ii) governed by a written agreement.
- b. *Hours Worked.* To calculate the hours an employee has worked, only actual hours captured as hours worked in the Cook County Time and Attendance System are counted. Absences, including paid or unpaid leave (such as vacation, holidays, sick leave, previous FMLA leave, lay-off, suspension, furlough, administrative leave, or leave of absence) are not counted in determining the required 1,250 hours. For Veterans, all periods of absence from work due to or necessitated by the Uniformed Services Employment and Reemployment Rights Act (USERRA covered service), 38 U.S.C. § 4301, *et seq.*, count toward the 1,250 hours worked requirement.
- c. *Entitlement.* Each time an Eligible Employee takes leave, the BHR Chief (or designee) will use the CCT System to determine the amount of leave the employee is entitled to. Leave entitlement is computed by subtracting the amount of leave the employee has





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taken under this policy in the last 12 months from the 12 weeks of available leave (26 weeks for Military Caregiver Leave consistent with this policy).

**2. BASIS**

a. County employees may request FMLA leave for the following reasons:

- i. The birth of a child and to care for the newborn child within one (1) year of birth;
- ii. The placement with the employee of a child for adoption or foster care and to care for the newly placed child within one (1) year of placement;
- iii. To care for an Immediate Family Member with a qualifying Serious Health Condition;
- iv. For the employee’s own qualifying Serious Health Condition that makes the employee unable to perform the essential functions of the employee’s job with or without reasonable accommodation;
- v. For any qualifying exigency related to the foreign deployment of a military member who is the employee’s Immediate Family Member (Qualifying Exigency Leave); or,
- vi. To care for a Covered Service Member with a Serious Injury or Illness, if the service member is the employee’s Immediate Family Member or Next of Kin (Military Caregiver Leave), during a single Leave Year.

b. If the employee is unable to initiate a request for FMLA leave, the County’s decision to designate leave as FMLA-qualifying will be based only on information received from the employee or the employee’s designee’s request for FMLA approval (i.e., if the employee is incapacitated, the employee’s Spouse, adult child, Parent, doctor, etc., may provide notice to the employer of the need to take FMLA leave).

**3. CONDITIONS**

- a. FMLA leave may be taken in a block of time, on an intermittent basis, or in the form of a reduced work schedule, depending on the basis indicated.
  - i. Leave taken for the birth, adoption, or foster care of a child must be taken continuously; it cannot be taken intermittently, unless the head of the affected department and the employee mutually agree to a reduced hour schedule and approval is obtained from the BHR Chief (or designee).



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- ii. Absences attributable to qualifying Serious Health Condition(s), and/or Incapacity due to pregnancy, prenatal care or chronic conditions, may be taken intermittently;
  - iii. Qualifying Exigency Leave may be taken intermittently; and,
  - iv. Military Caregiver Leave may be taken intermittently.
  
- b. *Communication.* Employees on FMLA leave are expected to be responsive to the BHR Leave Coordinator, their supervisor and/or department head during the leave.
  - i. *Employee Status.* On a basis that does not discriminate against employees on FMLA leave, the BHR Leave Coordinator may contact an employee on FMLA leave to ascertain the employee's status and intent to return to work.
  - ii. *Changed Circumstances.* The BHR Leave Coordinator, the employee's supervisor or department head may contact an employee on FMLA leave to obtain information concerning changed circumstances, including but not limited to, an employee's need to take more (or less) leave than originally anticipated. In such situations, the employee is required to provide the BHR Leave Coordinator notice within two (2) business days of the change in circumstances, unless such notice is not practicable.
  
- c. *Health Insurance.* Employees on FMLA leave shall continue to pay health benefits payroll contributions in order to maintain health benefits coverage.
  
- d. *Paid Time Off.* Employees on FMLA leave will be required to use at least half of their sick, compensation, and vacation time, in this order, as of the first date of absence, before taking any unpaid leave. Employees may opt to use more than the required half of each accrued leave bank in order to be compensated while on leave. Any portion of the FMLA period to which accrued leave is not applied will be without pay, unless the employee is eligible for holiday pay. Employees on FMLA leave shall accrue benefit time during the leave, in accordance with the applicable collective bargaining agreement and/or the County's Personnel Rules.
  
- e. *Holidays.* Employees on FMLA leave will receive holiday pay, and holidays will not be counted toward the employee's FMLA entitlement, provided that (1) the holiday falls on a day that the employee is typically scheduled to work, and (2) the employee remains on an active status.
  
- f. *Seniority.* Employees on FMLA leave shall not accrue seniority during the leave, unless otherwise provided by the applicable collective bargaining agreement and/or the County's Personnel Rules.



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- g. Concurrent Leave Designation.* If another approved leave also qualifies for FMLA leave, the leaves may run concurrently, pending review, and notice to the employee, by the BHR Leave Coordinator. The following leave(s) are hereby designated as leaves that will be counted against, and run concurrently with, the FMLA entitlement of Eligible Employees:

  - i. Workers' Compensation Time (i.e., any absence from work due to an approved worker's compensation claim);
  - ii. Annuity and Benefit Fund Disability Time (i.e., any absence from work that results from the employee's serious medical condition);
  - iii. Maternity/Paternity Leave Time (i.e., any leave that the employee takes under the County's Maternity/Paternity Leave Policy);
  - iv. Parental Leave Time (i.e., any leave that the employee takes under the County's Parental Leave Policy); and,
  - v. VESSA Leave Time (i.e., any FMLA qualifying leave that the employee takes under the County's VESSA Leave Policy).
  
- h. Bidding Privilege.* Employees on FMLA leave, who are in classifications in which work assignments are governed by a bidding system, may be allowed to bid even when they are on an FMLA leave of absence, provided that such employees are required to indicate that they are due back on, or prior to, the effective date of the bid. Employees who are not eligible to return to work on the effective date of the bid will not be allowed to bid until the bid following their return to duty.
  
- i. Secondary Employment.* Employees on FMLA leave, who take leave for their own Serious Health Condition, may not engage in secondary employment during hours when the employee would ordinarily be working for the County. Employees on FMLA leave, who take leave for another qualifying basis, may engage in secondary employment with pre-approval from the BHR Chief (or designee). Such approval will be withheld in the event that such secondary employment is not consistent with the purpose of, and/or representations made in obtaining, the FMLA leave.



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- j. *Dual Employment.* Employees on FMLA leave, who take leave for their own Serious Health Condition, may not engage in dual employment during hours when the employee would ordinarily be working for the County. Employees on FMLA leave, who take leave for another qualifying basis, may engage in any pre-approved dual employment. Such approval will be withheld in the event that such dual employment is not consistent with the purpose of, and/or representations made in obtaining, the FMLA leave.

**4. REQUIREMENTS**

Failure to meet the following requirements may result in delay or denial of FMLA leave, and/or disciplinary action up to and including discharge, in accordance with applicable collective bargaining agreement and/or the County's Personnel Rules.

- a. *Notice.* The employee shall notify his/her immediate supervisor and the BHR Leave Coordinator at least thirty (30) days in advance of taking FMLA leave, unless such notice is not practicable. If such notice is not practicable (for reasons such as a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, etc.), then the employee must provide notice of FMLA leave as soon as practicable. It is usually practicable for an employee to provide notice in accordance with the department's call in requirements for other types of absences. If the employee is unable to provide notice in accordance with the department's call in requirements, the employee may provide notice by contacting the BHR Leave Coordinator and submitting supporting documentation within seven (7) days following the employee's absence from work. Notwithstanding the above:
  - i. Notice of leave taken for the birth, adoption, or foster care of a child must be given thirty (30) days in advance;
  - ii. Notice of absences attributable to planned medical Treatments, and/or foreseeable incapacity due to pregnancy, prenatal care or chronic conditions covered under this policy, must be given thirty (30) days in advance, or as soon as practicable in emergency situations;
  - iii. Notice of Qualifying Exigency Leave, identifying the applicable qualifying exigency, must be given as soon as practicable, regardless of how far in advance such leave is foreseeable; and,
  - iv. Notice of Military Caregiver Leave must be given thirty (30) days in advance for planned medical Treatments, and as soon as practicable in emergency situations.



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- b. *Request.* The first time an employee requests leave for a qualifying basis, the employee is not required to specifically mention the FMLA. However, once an employee is approved for FMLA leave, the employee is required to specifically indicate use of FMLA time when absent for the same FMLA qualifying basis by designating an absence in the Cook County Time and Attendance (CCT) System as FMLA related, or submitting a completed FMLA Leave Request Form to the BHR Leave Coordinator.
  
- c. *Certification; Serious Health Conditions.* For purposes of FMLA leave taken for qualifying Serious Health Condition(s), the employee shall provide Certification from a healthcare provider to support the employee’s need for FMLA leave to the BHR Leave Coordinator, within fifteen (15) calendar days of a request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts, in which case the employee must submit the Certification as soon as practicable.
  - i. *Cost.* The employee is responsible for paying the costs of the Certification and ensuring that the Certification is provided to the BHR Leave Coordinator.
  
  - ii. *Deficient Certification.* If the Certification is incomplete or insufficient, the BHR Leave Coordinator will give the employee a written notice stating what additional information is necessary to make the Certification complete and sufficient, and the employee must provide the additional information within ten (10) calendar days.
    - 1. A Certification is considered “incomplete” if the Leave Coordinator receives a Certification, but one or more of the applicable entries have not been completed. A Certification is considered “insufficient” if the Leave Coordinator receives a complete Certification, but the information provided is vague, ambiguous, or non-responsive.
    - 2. If authorized by the employee, in compliance with HIPAA Privacy Rules, the Leave Coordinator may contact the health care provider for purposes of clarification and authentication of the medical Certification (whether initial Certification or recertification) after giving the employee an opportunity to cure any deficiencies.
    - 3. If the deficiencies specified by the Leave Coordinator are not cured, or the employee (or authorized representative) fails to authorize the health care provider to release all relevant



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medical information pertaining to the Serious Health Condition at issue, the County may deny the taking of FMLA leave.

- iii. *Second Opinion.* If there is reason to doubt validity of a certification, the employee will be required to obtain a second medical Certification, from a health care provider of the County’s choice, at the expense of the County.
- iv. *Third Opinion.* If the second opinion differs from the original Certification, the employee will be required to obtain a third Certification from a health care provider selected by both the County and the employee, at the expense of the County. The employee must cooperate with the County in the selection of a health care provider. When the third opinion is received from a health care provider, it shall be final and binding on all parties. If the employee (or authorized representative) fails to cooperate or agree in the selection of a provider for the third opinion, then the County’s selected provider’s opinion shall govern.
- v. The employee will be provisionally entitled to FMLA leave and benefits pending the second and/or third opinion. However, if the Certification fails to establish the employee’s entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the County’s existing leave policies. The employee may additionally be subject to disciplinary action up to and including discharge, in accordance with applicable collective bargaining agreement and/or the County’s Personnel Rules.
- d. *Recertification; Serious Health Conditions.* For purposes of FMLA leave taken for qualifying Serious Health Condition(s), the employee shall provide recertification from a health provider to support the employee’s need for FMLA leave to the BHR Leave Coordinator, within fifteen (15) calendar days of a request in connection with an absence by the employee, unless it is not practicable under the particular circumstances to do so despite the employee’s diligent, good faith efforts, in which case the employee must submit the recertification as soon as practicable.
  - i. *Cost.* The employee is responsible for paying the costs of the recertification and ensuring that the recertification is provided.
  - ii. *Content.* For recertification purposes, the County may ask for information as that obtained during the original certification. In addition, the County may provide the health care provider with a



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record of the employee's absence pattern and ask the health care provider if the Serious Health Condition and need for leave is consistent with such a pattern.

iii. *Deficient Recertification.* If the recertification is incomplete or insufficient, the BHR Leave Coordinator will give the employee a written notice stating what additional information is necessary to make the recertification complete and sufficient, and the employee must provide the additional information within ten (10) calendar days.

1. A recertification is considered "incomplete" if the Leave Coordinator receives a recertification, but one or more of the applicable entries have not been completed. A recertification is considered "insufficient" if the Leave Coordinator receives a complete recertification, but the information provided is vague, ambiguous, or non-responsive.
2. If authorized by the employee, the Leave Coordinator may contact the health care provider for purposes of clarification and authentication of the medical Certification (whether initial Certification or recertification) after giving the employee an opportunity to cure any deficiencies.
3. If the deficiencies specified by the Leave Coordinator are not cured, or the employee (or authorized representative) fails to authorize the health care provider to release all relevant medical information pertaining to the Serious Health Condition at issue, the County may deny the taking of FMLA leave.

iv. *Timing of Request for Recertification.* If the prior Certification indicates that the Serious Health Condition is of a limited duration, and the minimum duration of the condition is more than 30 days, the County will wait until such minimum duration expires before requesting a recertification, unless one of the following occurs, justifying an immediate request for recertification:

1. The employee requests an extension of leave;
2. Circumstances described by the previous Certification have changed significantly such as a change in the duration or frequency of the absence, the nature or severity of the illness, or other complications; or,
3. The County receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the Certification.



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In all other cases, including, but not limited to, cases where the previous Certification indicates that the Serious Health Condition is of an indefinite duration and/or that the employee will need intermittent or reduced schedule leave for a period in excess of six months (i.e., for a lifetime condition), the County will request recertification every six months.

- v. If the recertification fails to establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the County's existing leave policies. The employee may additionally be subject to disciplinary action up to and including discharge, in accordance with applicable collective bargaining agreement and/or the County's Personnel Rules.
  
- e. *Certification; Qualifying Exigency Leave.* For purposes of FMLA leave taken for qualifying exigency, the employee shall provide Certification of the qualifying exigency to support the employee's need for FMLA leave to the BHR Leave Coordinator, using the DOL Certification of Qualifying Exigency for Military Family Leave form, within fifteen (15) calendar days of a request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts, in which case the employee must submit the Certification as soon as practicable.
  
- f. *Certification; Military Caregiver Leave.* For purposes of FMLA leave taken for the Serious Injury or Illness of a Covered Service Member, the employee shall provide Certification for the Serious Injury or Illness of the Covered Service Member to support the employee's need for FMLA leave to the BHR Leave Coordinator, using the DOL Certification for Serious Injury or Illness of Covered Service Member form, within fifteen (15) calendar days of a request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts, in which case the employee must submit the Certification as soon as practicable.
  
- g. *Supporting Documentation.* The employee shall submit documentation corroborating the need for FMLA leave through the CCT System or to the BHR Leave Coordinator, within fifteen (15) calendar days of the date on which the employee's FMLA packet is e-mailed, faxed, or hand-delivered (note: the County allows three (3) additional days for receipt of mailed FMLA packets). Specific documentation required in accordance with each FMLA qualifying basis is described in Appendix C.





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- h. *Approval.* The FMLA leave request will be pending until approved (or denied) by the BHR Leave Coordinator. Within five (5) days of the Leave Coordinator’s receipt of a complete and sufficient Certification and absent any extenuating circumstances, the Leave Coordinator will inform employees in writing that their FMLA leave request has either been approved or denied. An approval letter will state the qualifying condition for which FMLA leave has been approved, the length of time the approval is effective, and the steps the employee must follow to report FMLA related absences. A denial letter will state the reason for the denial.
- i. FMLA leave may be denied for several reasons, including, but not limited to, failure to timely notify the BHR Leave Coordinator of a foreseeable FMLA absence and failure to timely submit requested documentation to the BHR Leave Coordinator.

**5. SPECIAL RULES FOR INTERMITTENT LEAVE**

a. Alternative Employment Arrangements

A department head, with the prior written approval of the BHR Chief (or Designee), may make alternative employment arrangements for an employee in order to better accommodate the employee’s intermittent or reduced schedule.

b. Intermittent Leave Time Increments

- i. An employee may take leave intermittently in no less than 15-minute increments for timekeeping purposes, unless the employee has a time sensitive schedule.
- ii. An employee with a time sensitive schedule who uses Intermittent Leave to commence or end work mid-way through a shift will have the entire period that the employee is absent designated as FMLA leave and counted against the employee's FMLA entitlement.
- iii. An employee taking FMLA leave in connection with a Serious Health Condition must take such leave in accordance with the most recent health care provider Certification on file.

c. Department Procedures

- i. When an employee is approved for intermittent FMLA leave, the supervisor shall impose the same standards that apply to any absence from work.



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- ii. The employee must follow the department’s standard call in procedures for reporting an absence. Absent a reporting procedure by the department, the employee is advised to provide at least 24 hours’ notice and inform the manager/supervisor of the number of FMLA hours the employee anticipates using for the serious medical condition, if known.
- iii. The manager/supervisor may ask the employee whether the employee’s absence is FMLA-covered and when the employee expects to return to work and the employee is required to respond to the manager/supervisor.
- iv. The manager/supervisor shall not ask what the employee’s medical condition is and the employee is not required to disclose the medical condition to his or her manager/supervisor.
- v. The manager/supervisor may request that an employee make reasonable effort to schedule planned medical treatments and/or appointments during off hours, or in a way that less adversely affects the department’s work or operations, and the employee is required to make reasonable effort to abide by the request.

**6. RETURN TO WORK (REINSTATEMENT)**

- a. All employees returning to work after an FMLA qualifying absence must follow the Bureau of Human Resources’ procedures for returning to work.
- b. An employee who takes leave under this policy may be asked to provide a fitness for duty clearance from the health care provider.
- c. Following a return from FMLA leave, the employee will be reinstated to his or her former position or an equivalent position with the same pay, benefits, and conditions of employment, unless the employee is unable to perform the essential functions of the former job, with or without reasonable accommodation as required by law, except as provided below:
  - i. If the employee’s position is eliminated or subject to abolishment or layoff, then the employee’s right to reinstatement is terminated, subject to any applicable laws, County Personnel Rules, and collective bargaining agreement.
  - ii. If the employee is a Key Employee, and the County determines that reinstatement will cause substantial and grievous economic injury to



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the County’s operations, then such employee may be denied reinstatement.

- d. An employee seeking additional leave time beyond the approved leave period allowed under FMLA shall submit a request to the BHR Leave Coordinator to obtain some other form of leave, such as a personal leave of absence, if eligible, in accordance with the applicable policies and procedures.
- e. If an employee does not return to work when the FMLA leave expires and has not been approved for an additional leave of absence or other reasonable accommodation as required by law, employment may be terminated in accordance with the County’s Personnel Rules.

**K. RESOURCES**

Additional information and resources may be obtained by contacting the BHR Leave Coordinator, the Employee Assistance Program or respective Personal Support Program.

**L. PENALTIES**

Failure to comply with this policy and its procedures may result in delay or denial of FMLA leave, and/or disciplinary action, up to and including discharge, in accordance with applicable collective bargaining agreement and/or the County’s Personnel Rules.



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**APPENDIX A**

**EMPLOYEE AND MANAGEMENT RESPONSIBILITIES (GUIDE)**

<b>Step</b>	<b>Responsibility</b>	<b>Action</b>
1.	Employee	<ul style="list-style-type: none"> <li>• Designates absence in CCT System as FMLA related and uploads relevant documentation.</li> <li>• Notifies Department Head (or designee) of the need to be off for an FMLA qualifying condition.</li> <li>• Contacts BHR Leave Coordinator to request an FMLA application packet and provides relevant information.</li> </ul>
2.	Department Head (or Designee)	<ul style="list-style-type: none"> <li>• Advises employee to contact BHR Leave Coordinator to request an FMLA application packet.</li> </ul>
3.	BHR Leave Coordinator	<ul style="list-style-type: none"> <li>• Receives employee's request for FMLA.</li> <li>• Notifies employee to designate absence in CCT System as FMLA related and upload relevant documentation.</li> <li>• Sends employee an FMLA application packet within two (2) business days of employee's request or as soon as practicable.</li> <li>• Reviews employee' eligibility.</li> <li>• Notifies the employee of eligibility for FMLA leave within five (5) business days of initial request for leave.</li> </ul>
4.	Employee	<ul style="list-style-type: none"> <li>• Completes and returns application packet to BHR Leave Coordinator within the required time.</li> </ul>
5.	BHR Leave Coordinator	<ul style="list-style-type: none"> <li>• Initiates contact with employee and physician as needed/allowed.</li> <li>• Contacts employee if medical Certification is not received.</li> <li>• Notifies the employee in writing of decision approving or denying FMLA leave within five (5) business days of receiving complete and sufficient Certification. Notifies the Department Head, Time Keeper, and the Comptroller's Office of that decision in writing.</li> <li>• Keeps a record of all communication with employee regarding employee's FMLA leave, in accordance with applicable law.</li> </ul>



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6.	BHR Chief (or Designee)	<ul style="list-style-type: none"> <li>• Acts as liaison to resolve issues/conflicts.</li> </ul>
7.	Department Head (or Designee)	<ul style="list-style-type: none"> <li>• Makes appropriate designation on employee's attendance and payroll records.</li> <li>• Maintains a cumulative tracking of FMLA time used in CCT System.</li> <li>• Inputs appropriate code in CCT System.</li> </ul>

**APPENDIX B**

**CERTIFICATION; COUNTY REQUEST FOR SECOND OPINION**

<b>Step</b>	<b>Responsibility</b>	<b>Action</b>
1.	BHR Leave Coordinator	<ul style="list-style-type: none"> <li>• Determines whether there is reason to question a medical Certification.</li> <li>• Advises employee, in writing, of the County's decision to seek a second opinion (at County's expense). Copies BHR Chief (or designee) and employee's Department Head.</li> <li>• Designates health care provider.</li> </ul>
2.	Employee and BHR Leave Coordinator	<ul style="list-style-type: none"> <li>• Secure second opinion as appropriate.</li> </ul>

**CERTIFICATION; COUNTY REQUEST FOR THIRD OPINION**

<b>Step</b>	<b>Responsibility</b>	<b>Action</b>
1.	BHR Leave Coordinator	<ul style="list-style-type: none"> <li>• Determines the need for a third opinion when medical opinion of employee's health care provider differs from health care provider used for second opinion.</li> <li>• Advises employee of the County's decision to seek a third opinion (at County's expense) with copies of the request forwarded to the BHR Chief (or designee) and the employee's Department Head.</li> <li>• Determines, jointly with employee, the health care provider to be used for third opinion.</li> </ul>
2.	Department Head (or Designee)	<ul style="list-style-type: none"> <li>• Maintains records pending the employee's FMLA benefits.</li> </ul>



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3.	Employee and BHR Leave Coordinator
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- Secure a third opinion as appropriate.

**RECERTIFICATION**

<b>Step</b>	<b>Responsibility</b>
1.	Employee
2.	BHR Leave Coordinator

<b>Action</b>
<ul style="list-style-type: none"> <li>• Provides the requested recertification to the BHR Leave Coordinator.</li> </ul>
<ul style="list-style-type: none"> <li>• Decides whether recertification is warranted.</li> <li>• Notifies employee in writing of determination with copy to the Department Head.</li> </ul>



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**APPENDIX C**

**REQUIRED DOCUMENTATION**

<b>Qualifying Basis</b>	<b>Required Documentation</b>
Birth of employee's child	<ul style="list-style-type: none"> <li>• Certification of Health Care Provider for Employee's Serious Health Condition or prenatal care; and/or</li> <li>• Birth Certificate for mother's postnatal care (for fathers - if not married to child's mother, the father's name must be on the child's Birth Certificate); and/or</li> <li>• Certification of Health Care Provider for Family Member's Serious Health Condition.</li> </ul>
Placement (including pre-placement) of a child with employee for adoption or foster care	<ul style="list-style-type: none"> <li>• Certified legal record of placement.</li> </ul>
Care for employee's Spouse, child, or Parent with a Serious Health Condition	<ul style="list-style-type: none"> <li>• Certification of Health Care Provider for Family Member's Serious Health Condition.</li> </ul>
Employee's Serious Health Condition	<ul style="list-style-type: none"> <li>• Certification of Health Care Provider for Employee's Serious Health Condition.</li> </ul>
Qualifying Exigency	<ul style="list-style-type: none"> <li>• Statement of appropriate facts regarding the qualified exigency and supporting documentation such as a copy of the covered military member's active duty orders and Certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought. This information may include contract information if the leave involves meeting with a third party. The statement must include: <ul style="list-style-type: none"> <li>○ Dates on which qualifying exigency will commence.</li> <li>○ Continuous or single period of leave with beginning and ending dates of leave.</li> <li>○ Intermittent Leave, and estimate of the frequency and duration of the qualifying exigency; and if the qualifying exigency involves meeting with a third-party; a brief description of the purpose of the</li> </ul> </li> </ul>



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	<p>meeting and the contact information for the third-party.</p> <p>The County only requires Certification <u>the first time an employee requests leave for Qualifying Exigency.</u></p>
<p>Military Caregiver Leave</p>	<p><u>Serious Injury or Illness of Covered Service Member</u></p> <p>U.S. Department of Labor form WH-385 and/or WH-385-V, Certification for Serious Injury or Illness of Covered Service Member completed by one of the following health care providers:</p> <ul style="list-style-type: none"> <li>• A United States Department of Defense (DOD) health care provider;</li> <li>• A United States Department of Veterans Affairs (VA) health care provider;</li> <li>• A DOD TRICARE network authorized private health care provider; or,</li> <li>• A DOD non-network TRICARE authorized private health care provider.</li> <li>• A non-DOD or non-VA health care provider: a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or any other person determined by the Secretary to be capable of providing health care services.</li> </ul> <p>Satisfactory medical documentation also includes invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill service member at his or her bedside.</p> <p>The regulations prohibit recertification during the time period specified in the documentation, and prohibit second or third medical opinions in connection with leave requested for this purpose. However, second and third opinions are permitted when the Certification has been completed by a non-DOD or non-VA health care provider.</p> <p><u>Enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers</u></p> <ul style="list-style-type: none"> <li>• The County may seek authentication and clarification of the documentation indicating the service member's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.</li> </ul>





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	<p>Second or third opinions are not permitted when the service member's Serious Injury or Illness is shown by documentation of enrollment in this program.</p> <ul style="list-style-type: none"><li>• The County may require an employee to provide confirmation of covered family relationship to the service member when an employee supports his or her request for FMLA leave with a copy of such enrollment documentation.</li><li>• The County may also require an employee to provide documentation such as a Veteran's Form DD-214, showing the date of the Veteran's discharge.</li></ul>
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