

# **Board of County Commissioners**

## **Escambia County, Florida**

Title: Family and Medical Leave Act (FMLA) Policy  
Date Adopted: March 5, 2009  
Effective Date: March 5, 2009  
Reference: U.S. Department of Labor, Family and Medical Leave Act of 1993 (Public Law 103-3) and National Defense Authorization Act (Public Law 110-181)  
Policy Amended: November 28, 1995, February 17, 2005

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A. Purpose

To establish a uniform and fair policy for employees to use leave in accordance with The Family and Medical Leave Act of 1993 (FMLA), and, in compliance with other Board of County Commissioners (BCC) policies.

B. Scope

This policy shall apply to all employees of the BCC, including regular, probationary, term, intermittent, emergency provisional, grant-funded, relief, temporary, seasonal, and student assistants who have been employed by Escambia County for at least 12 months and have worked at least 1250 hours during the preceding 12 months.

C. General

1. An eligible employee shall be granted up to 12 weeks of paid or unpaid family and medical leave during any 12-month period for the following reasons:
  - a. To care for a son or daughter because of its birth; or
  - b. In order to care for the employee's spouse, son, daughter, parent or grandparent who has a serious health condition; or
  - c. A serious health condition that renders the employee unable to perform the functions of the employee's position; or
  - d. The placement of a son or daughter with an employee for adoption or foster care. Entitlement to leave for birth, placement for adoption or foster care of a son or daughter expires 12 months from the date of the birth or placement of the child.
2. Son or daughter means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*, who is:
  - a. Under 18 years of age; or,
  - b. 18 years of age or older and incapable of self-care because of a mental or physical disability.

3. A serious health condition means an illness, injury, impairment, or physical or mental condition that involves either:
  - a. In-patient care in a hospital, hospice or residential medical care facility, including any period of incapacity (for purpose of this policy, defined to mean the inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore or recovery there from), or any subsequent treatment in connection with in-patient care; or
  - b. Continuing treatment by a health care provider.
4. The amount of FMLA leave available to the employee is calculated using the following:
  - a. FMLA leave is measured forward from the date that the employee first uses leave for the qualifying event.
  - b. Each time the employee takes FMLA leave the remaining leave entitlement shall be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.

D. Responsibilities

1. Under this policy, the employee shall have the following responsibilities:
  - a. If the need for leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member, the employee must submit a written application for this leave at least 30 days before the leave is to begin. If the leave is to begin in less than 30 days, the employee shall give such notice as is practicable. The employee shall make a reasonable effort to schedule medical treatment so as not to disrupt unduly the operation of the BCC and/or the employee's Bureau, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate.
  - b. Upon request, the employee shall furnish a certification issued by the health care provider of the employee or of the son, daughter, spouse, or parent of the employee in order to support an employee's claim of the employee's serious health condition or the employee's need to care for a seriously ill son, daughter, spouse, or parent. The employee shall furnish the certification in advance of the commencement of leave if possible. The BCC shall give the employee at least 15 calendar days to furnish the certification. The certifications shall state the following information:
    - (1) The date on which the condition commenced,
    - (2) The probable duration of the condition,
    - (3) Medical facts regarding the condition,
    - (4) If applicable, a statement that the employee is needed to care for the son, daughter, spouse, or parent and estimate of the duration of the need for such care, and
    - (5) If applicable, a statement that the employee is unable to perform the functions of the position of the employee.

- c. The employee must continue to pay his/her share of the health insurance premiums. If the employee fails to do so, notice(s) of proposed insurance cancellation and the opportunity to pay the premium as required by the FMLA will be provided before the cancellation.
  - d. All employees who used FMLA leave because of their own serious health conditions must obtain and present certification from their health care provider(s), at the employee's expense, that they are able to resume work before they will be allowed to return to work. The certification shall be limited to the serious health condition for which leave was taken.
  - e. Failure to provide information (that is allowed by the FMLA) to the Human Resources Division may result in the employee's leave being delayed or denied.
2. Under this policy, the Board of County Commissioners shall have the following responsibilities:
- a. In the event an absence is for a reason covered by the FMLA, the BCC, on a case by case basis, reserves the right to count it as FMLA leave whether the employee has applied for it or not. When this occurs, the employee will be promptly notified as required by law. If the employee disputes the FMLA claim, the employee must notify the Human Resources Division immediately.
  - b. While an employee is using FMLA leave, the County will continue to pay its portion of the health insurance premiums and maintain the employee's coverage under the health plan in the same manner as if the employee had been continuously employed during the entire twelve-week period; provided, the employee continues to pay his or her share of the premiums.
  - c. The BCC will inform employees using FMLA leave of any changes in applicable premiums.

E. Other

1. Paid or Unpaid Leave

- a. Employees will be required to exhaust all available paid leave while using FMLA leave. Available paid leave includes, but is not limited to, sick leave, compensatory leave, annual leave, MOB leave, paid time off leave and extended leave bank leave. Once the employee has exhausted all available paid leave, the employee will be placed in an unpaid status for the duration of the FMLA leave.
- b. FMLA leave and any leave taken through workers' compensation will run concurrently when the compensable workplace injury or illness qualifies as a serious health condition under FMLA.
- c. If the employee is in a paid leave status, the employee will continue to accrue annual, sick and paid time off leave accordingly. If the employee is in an unpaid leave status, the employee will not accrue annual, sick or paid time off leave.
- d. The BCC shall inform the employee of its policy regarding the use of paid leave within five business days of receiving notice of the employee's intent to use FMLA leave or the BCC's request to place the employee on FMLA leave.

## 2. Intermittent Leave

- a. In the case of unpaid leave for the birth or placement of a child, foster care, or military caregiver leave, intermittent leave or working a reduced number of hours is not permitted unless both the BCC and the employee agree. The BCC's agreement is not required, however, for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.
- b. FMLA leave taken to care for a son, daughter, spouse, parent or grandparent with a serious health condition, or taken for the employee's own serious health condition can be taken intermittently or on a reduced leave schedule only when medically necessary.
- c. If an employee needs intermittent leave or leave on a reduced leave schedule, the BCC may require the employee to transfer temporarily, during the period for which the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or reduced leave. The alternative position shall have equivalent pay and benefits.

## 3. Husband and Wife Leave

- a. If both spouses work for the BCC, the combined leave shall not exceed 12 weeks in a twelve month period if the leave is taken:
  - (1) For the birth of the employee's son or daughter or to care for the child after birth;  
or
  - (2) For the placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, or
  - (3) To care for the employee's parent or grandparent with a serious health condition.

## 4. Return from Family and Medical Leave

- a. An employee must submit a Fitness for Duty Certification prepared by his/her health care provider stating that the employee can return to full duty status based on the ability to perform the essential functions of his/her position.
- b. An employee who returns to work for at least 30 calendar days is considered to have returned to work.
- c. With the exception of certain key employees (as defined by the FMLA), employees who return to work from FMLA leave within or on the business day following the expiration of the leave are entitled to return to their job or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
- d. Designation of key employee status and whether such status will affect the employee's right to reinstatement will be made at the time the employee requests leave, or at the commencement of leave, whichever is earlier, or as soon as practicable thereafter if such determinations cannot be made at that time.

## 5. Separation and Leave Balances

- a. When the employee gives unequivocal notice of their intent not to return to work, the employment relationship will be terminated, and the employee's entitlement to continued leave, maintenance of health benefits and reemployment will cease, unless otherwise required by federal or state law.
- b. If an employee is separated because he/she cannot return to work at the expiration of their FMLA leave and the employee has a remaining annual or sick leave balance, the employee can receive payment for unused leave of one-half (½) of the available sick leave balance not to exceed 576 hours and any available annual leave not to exceed 328 hours.
- c. Employees who are eligible for leave under the County's Paid Time Off (PTO) Policy shall adhere to the guidelines established for separation and leave balances.

## 6. Extension of Family Leave Status

- a. When the employee is on leave due to a personal illness or injury, and the employee can provide credible medical evidence that demonstrates that it is very likely that they will be returning to "full duty status" within 90 days, the employee may submit a written request to their Bureau Chief for an extension beyond the 12-week FMLA time period.
- b. If the mission can be accomplished and/or funding for temporary support is available, the Bureau Chief may then recommend an extension to the Human Resources Manager.
- c. An employee may request up to a 90-day extension of their FMLA leave if his/her health care provider has not released him/her to "full duty status". This request may be made to the Bureau Chief at least one week prior to the expiration of available FMLA leave. If the request is approved by the Bureau Chief the Human Resources Manager will review and forward the request to the County Administrator for consideration and final approval. If approved, he/she will be maintained as an employee of the BCC for a period not to exceed 90 days. Any available combination of sick leave, annual leave, paid time off leave, extended leave bank leave, MOB leave or Leave Without Pay (LWOP) (if annual leave and sick leave is exhausted) may be used during this period.

## F. Leave Under the National Defense Authorization Act

1. The National Defense Authorization Act amended the FMLA to provide eligible employees leave rights related to military service. These leave rights are:
  - a. Qualifying exigency leave – eligible employees are entitled to up to 12 weeks of leave because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation.
  - b. Military caregiver leave – an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty or active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member. This military caregiver leave is available during "a single 12-month period" during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave.
2. The National Defense Authorization Act defines the following:

- a. Active duty – duty under a call or order to active duty under a provision of law.
- b. Covered service member – a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.
- c. Outpatient status – the status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the armed forces receiving medical care as outpatients.
- d. Next of kin – the nearest blood relative of the covered service member.
- e. Qualifying exigency – for purposes of leave entitlement under Section F.1.a. of this policy, a qualifying exigency must be one of the following events:
  - (i) Short-notice deployment.
  - (ii) Military events and related activities.
  - (iii) Childcare and school activities.
  - (iv) Financial and legal arrangements.
  - (v) Counseling.
  - (vi) Rest and recuperation.
  - (vii) Post-deployment activities.
  - (viii) Any additional activity agreed to by the employee and the Human Resources Manager
- f. Serious injury or illness – in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

#### G. Required Information

- 1. The following information may be required for requesting, approval, verification and compliance with the Family and Medical Leave Act of 1993 and/or the National Defense Authorization Act. These forms and letters will be provided to employees accordingly:
  - a. Application for Family and Medical Leave
  - b. U.S. Department of Labor Form (WH-380-E)
  - c. U.S. Department of Labor Form (WH-380-F)
  - d. U.S. Department of Labor Form (WH-381)

- e. U.S. Department of Labor Form (WH-382)
  - f. U.S. Department of Labor Form (WH-384)
  - g. U.S. Department of Labor Form (WH-385)
  - h. Notification of FMLA Letter to the Employee
  - i. Fitness for Duty Certification
2. Health Insurance Portability and Accountability Act of 1996 (HIPPA)
- a. According to HIPPA, certain medical information will be requested from the employee and the employee's health care provider. This information may be requested by the Human Resources Manager or the designated FMLA Leave Administrator, but not by the employee's direct supervisor.
  - b. The BCC will comply with HIPPA guidelines with respect to all medical information of its employees.

H. Communication of Policy

The Human Resources Division will be responsible for the implementation and compliance of this policy. Any amendments made after the effective date will be made available to all employees of the BCC.