

**HUMAN RESOURCES POLICY**  
**Fauquier County, Virginia**

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**Policy Title: Family and Medical Leave**  
**Section No.: 2-G**

**Effective Date: 5/14/09**  
**Supersedes Policy: 1/12/06**

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**I. PURPOSE**

It is the objective of the Board of Supervisors to provide eligible employees with unpaid leave in accordance with the Family and Medical Leave Act of 1993 (FMLA), et seq.

**II. SCOPE**

This policy applies to all Fauquier County Government employees (herein known as the county).

**III. DEFINITIONS**

**A. Active Duty**

Duty under a call or order to active duty under a provision of law referred to in 10 U. S. C § 101 (a)(13)(B).

**B. Contingency Operation**

A Contingency Operation:

1. is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or
2. results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of title 10, United States Code, chapter 15 of title 10, Subpart A, Part 1 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress.

**C. 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 on the temporary disability retired list, for a serious injury or illness.

D. Eligible Employees

Employees who have been employed by the county for at least 12 months and worked at least 1,250 hours (as designated by the FMLA) during the 12 months before the start of leave.

1. Employment prior to a continuous break in service of seven years or more will not be included when determining eligibility.
2. The required 1,250 hours do not have to be worked during consecutive months; however, the 1,250 hours of work requirement applies to the 12 months immediately preceding the start of leave.

E.. Employment Benefits

Employment benefits, for the purposes of this policy, shall be defined as benefits provided by the county to eligible employees including group life insurance, health insurance, educational benefits, pensions, annual and sick leave.

F. Family/Medical Leave

Leave without pay (or use of employee's accrued leave) for up to 12 weeks during a single 12 month period for the following reasons:

1. due to the birth of a child or the placement of a child with an employee for adoption or foster care; or
2. because the employee is needed to care for a family member (child, spouse, or parent) with a serious health condition; or
3. because an employee's own serious health condition makes him/her unable to do his/her job; or
4. because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the employee or the employee's spouse, son, daughter, or parent is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation; or
5. leave to care for a covered service member who is an employee's spouse, child, parent, or next of kin (this type of leave can be taken for up to 26 weeks during a single 12 month period).

G. Health Care Provider

For the purposes of this policy, health care providers shall include the following:

1. a doctor of medicine or osteopathy who is licensed to practice medicine or surgery by the state in which he/she practices;
2. any other person determined by the Secretary of the Department of Labor to be capable of providing health care services; and
3. others capable of providing health care services to include only podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners and nurse-midwives authorized to practice in the state and performing within the scope of their practice as defined under state law, and Christian Science practitioners.

H. Key Position

A key position shall be defined as a position occupied by an employee who is among the highest paid 10 percent of all general government employees.

I. Next of Kin

Used with respect to an individual, the nearest blood relative of that individual (other than the individual's spouse, parent, son or daughter) in the following order of priority: blood relatives who have been granted legal custody of the service member, siblings, grandparents, aunts and uncles, and first cousins, unless the service member has designated in writing a different blood relative for purposes of military caregiver leave.

J. Outpatient status

With respect to a covered service member, the status of a member of the Armed Forces assigned to:

1. a military treatment facility as an outpatient; or
2. a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

K. Parent

A parent shall be defined as a biological parent or individual who served as the employee's parent and was charged with the duties and responsibilities of the parent. A parent does not include parent-in-law.

L. Qualifying Exigency

1. Issues arising from a covered military member's short notice deployment (i.e., deployment on seven or less days of notice) for a period of seven days from the date of notification;
2. military events and related activities or sponsored family support programs;
3. certain childcare and related activities arising from the active duty or call to active duty status of a covered service member;
4. making or updating financial and legal arrangements to address a covered military member's absence;
5. attending counseling (not provided by a health care provider) for oneself, the military member, or child of the military member, the need for which arises from the active duty or call to active duty status of the covered military member;
6. taking up to 5 days of leave to spend time with a military member on short-term temporary rest and recuperation leave;
7. attending certain post-deployment activities sponsored by the military for a period of 90 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;
- or
8. any other events which employer and employee agree is an qualifying exigency.

M. Serious Health Condition/Illness

A serious health condition/illness shall be defined as an illness, injury, impairment or physical or mental condition that involves:

1. inpatient care in a hospital, hospice or residential medical care facility; or
2. continuing treatment by a healthcare provider; or
3. in the case of a member of the Armed Forces, including a member of the National Guard or Reserves; an injury or illness incurred by the member in 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.

N. Spouse

A husband or wife as recognized under the laws of the Commonwealth of Virginia for the purposes of marriage.

O. Son or Daughter

A biological, adopted or foster child; step-child; legal ward; or other persons for whom the employee acts in the capacity of a parent. The child must be under age 18 or be age 18 or older and incapable of self-care due to a mental or physical disability.

P. Year

A rolling 12-month period measured backward from the start date of an employee's request for use of FMLA leave.

IV. **PROCEDURES**

A. Leave

Eligible employees may take up to a combined twelve (12) weeks of unpaid family and medical leave per year for the following reasons:

1. The birth of a child (to be taken within 12 months of the child's birth).
2. The placement of a child with the employee for adoption or foster care (to be taken within 12 months of the date of placement).  
  
(Family/Medical Leave associated with child birth or child placement shall be taken in one block of time up to 12 weeks, unless the employee and supervisor agree otherwise.)
3. In order to care for a child, a dependent son or daughter over 18 years of age who is incapable of self-care due to a mental or physical disability, a spouse or a parent who has a serious health condition that involves
  - a. in-patient care in a hospital, hospice, or residential medical care facility; or
  - b. continuing treatment by a health care provider.
4. Because of a serious personal health condition that renders the employee unable to perform the functions of his/her position.

The county may request certification that the employee is unable to work at all or is unable to perform any of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act.

5. Leave Related to Active Duty or a Call to Active Duty
  - a. If the necessity for leave is because of a qualifying exigency arising from the fact that a family member is on active duty, has been notified of an impending call to active duty, or the call to active duty is foreseeable, the employee shall give such notice to the employee's Department Head/Constitutional Officer as is reasonable and practicable.
  - b. The Human Resources Department may require that a request for leave because of a qualified exigency arising from the fact that the employee's spouse, son, daughter, or parent is on active duty be supported by a

certification issued in accordance with regulations issued by the Secretary of Labor. If the Secretary of Labor issues a regulation requiring such certification, the employee shall provide, in a timely manner, a copy of such certification to the Human Resources Department.

B. Leave to Care for a Covered Service Member

1. Eligible employees may take up to 26 workweeks of unpaid family and medical leave during a single 12 month period to care for a covered service member. This 12-month period begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12-month period established for other types of FMLA leave.
2. If the necessity for leave is foreseeable based on a planned treatment, the employee shall:
  - a. Make a reasonable effort to schedule the treatment so as not to disrupt the operations of the County Department.
  - b. Provide the Department Head/Constitutional Officer with at least thirty (30) days notice, before the date which leave is to begin, of the employee's intention to take leave. If the date of treatment requires leave to begin in fewer than thirty (30) days, the employee shall provide as much notice as practicable.
3. The Human Resources Department may require that a request for leave to care for a covered service member be supported by a certification issued by the healthcare provider of the person in need of care. The employee shall provide such notice as soon as practicable.

Certification will be sufficient if it states:

- a. the date on which the serious health condition or serious injury or illness commenced;
  - b. the probable duration of the condition; and
  - c. the appropriate medical facts within knowledge of the healthcare provider regarding the condition.
4. If leave is to be taken on an intermittent or reduced leave schedule for planned medical treatment, the certification must contain the dates on which such treatment is expected to be given and duration of such treatment.

C. Notice to Employees

1. The county shall post, in conspicuous places, a notice explaining the FMLA's provisions and providing information about the procedure for filing complaints with the Department of Labor.

2. When an employee requests FMLA leave, or the Human Resources Department has knowledge that an employee's leave may be for an FMLA-qualifying reason, the Human Resources Department should notify the employee of the employee's eligibility to take FMLA leave within one to two business days.

The Human Resources Department will provide written notice detailing the expectations and obligations of the employee. This written notice should be accompanied by any required certification form.

3. The Human Resources Department should give the employee written notice whether the leave will be designated and will be counted as FMLA leave within five (5) business days. If it is determined that the leave will not be designated as FMLA-qualifying, the Human Resources Department must inform the employee of that determination.

D. Certification of Leave

1. An employee requesting family/medical leave must complete and required Certification Form within 15 days from the date leave is requested.
  - a. If incomplete or insufficient medical certification is received, employee has 7 days to cure deficiencies. Failure to due this may result in denial of leave.
  - b. The county may require, at its own expense, a second opinion. The health care provider cannot be one who is employed by the county on a regular basis.
  - c. If the second opinion differs from the first, the county may, at its own expense, require a third opinion from a health care provider designated or approved jointly by the employee and the county. The opinion of the third health care provider shall be considered final and binding upon the county and the employee.
  - d. The county may require an employee to report periodically during the leave period on his/her leave status and intention to return to work, and to provide subsequent re-certifications on a reasonable basis.

E. Restricted Use Of Family And Medical Leave

1. The time missed from work due to Family/Medical Leave may not exceed 12 weeks (or 26 weeks, in the case of caring for a covered service member) in a single 12 month period unless approved by the Department Head/Constitutional Officer.
2. Family/Medical Leave may not be used for short-term conditions for

which treatment and recovery are brief, such as minor illnesses and out-patient surgical procedures with expected brief recuperating periods. FMLA does not provide for the intermittent care of a child for such commonplace illnesses as colds and flu, unless the circumstance is a qualifying exigency.

3. Family/Medical Leave and workers' compensation leave shall run concurrently, provided the reason for the leave is due to a qualifying serious illness or injury and the employer properly notifies the employee in writing that the leave will be counted as Family/Medical Leave.

F. Paid Leave

1. Employees are required to use any available accrued paid leave for absences covered under this policy, with the exception of up to one-week of sick leave.

Paid leave includes: Annual Leave, Compensatory Leave, Floating Holidays, and Sick Leave.

2. Employees participating in the sick leave bank may substitute paid sick leave bank leave only for Family/Medical Leave taken for the employee's own serious medical condition.
3. Employees may request leave donations to be used to substitute paid leave for Family /Medical Leave taken for the employee's own serious medical condition or to care for a spouse, child, or parent with a serious health condition.
4. If an employee's accrued leave balances, sick leave bank, or leave donations are used for Family/Medical Leave, this time will be counted toward the annual Family/Medical Leave entitlement.

G. Intermittent Leave And Reduced Scheduled Leave

1. When medical necessary because of an eligible employee's own serious health condition, the serious health condition of a child, spouse or parent or to care for an injured service member, an employee may take family/medical leave on an intermittent leave basis or on a reduced schedule.
2. An intermittent leave schedule is a leave schedule that permits the employee to take leave periodically for a few hours a day, or for a few days, on an as-needed basis.
3. A reduced schedule is a leave schedule permitting the employee to reduce his/her usual number of hours worked per workweek or per workday.
4. Intermittent leave may be charged in no less than one-half hour increments.

5. While an employee is on an intermittent or reduced leave schedule, the county may temporarily transfer the employee to an alternative position which better accommodates the recurring leave as long as the new position carries equivalent pay and benefits.

H. Notice Of Leave

1. If possible, an employee must submit a written request for family/medical leave at least 30 days before the anticipated beginning of the leave. If an emergency or unforeseen event precludes such advance notice, the employee must give notice as soon as possible.
2. Any leave taken by an employee that may be covered under the Family and Medical Leave Act must be designated as family/medical leave.

I. Rules for Husband and Wife Employed By Fauquier County

1. A husband and wife who are both eligible for family and medical leave and are employed by the county shall be granted family and medical leave only for a combined total of twelve (12) weeks per year when the leave is taken for the birth, foster placement, or adoption of a child or to care for the child after birth, adoption, or foster placement and to care for a parent with a serious health condition.
2. A husband and wife who are both eligible for family and medical leave and are employed by the county shall be granted family and medical leave only for a combined total of twenty-six (26) workweeks per year if the leave
  - a. is taken to care for a covered service member; or
  - b. is taken as a combination of leave to care for a covered service member and leave for the birth, foster placement, or adoption of a child or to care for the child after birth, adoption, or foster placement or to care for a parent with a serious health condition. However, if the leave taken by the husband and wife includes only leave for the birth, foster placement, or adoption of a child or to care for the child after birth, adoption, or foster placement or to care for a parent with a serious health condition, the leave for that reason shall be limited to twelve (12) workweeks per year.

J. Status Of Benefits

1. Health Insurance

The county will continue to contribute to the health insurance premiums of employees covered under FMLA as discussed below:

- a. When an employee is using paid leave, the payroll deductions for the employee portion of the health insurance premiums continue.
- b. When an employee is on leave without pay, the employee portion of the health insurance premiums must be paid by the employee.

If an employee fails to make premium payments, the county will follow the same procedures to terminate coverage as it would if the employee failed to pay premiums while on a leave without pay status. An employee whose coverage terminated pursuant to this policy will be allowed to re-enroll in the health insurance program upon return to work from family/medical leave.

- c. If an employee fails to return to work at the end of leave under FMLA, he/she will be required to reimburse the county for the cost of the premiums paid by the county for maintaining coverage during the leave.

There will be no recovery of premiums if an employee fails to return to work due to a serious health condition or other circumstances beyond his/her control.

2. Life Insurance

The county will continue to pay life insurance premiums while an employee is on family/medical leave.

3. Leave Accrual

An employee will not accrue annual or sick leave during any period of leave without pay.

K. Returning From Leave

An employee who takes leave because of his/her own serious health condition will be required to provide medical certification that he/she is fit to resume work, at least three (3) days prior to date of return to work. An employee failing to provide the requested medical certification will not be permitted to resume work until the certification is submitted.

L. Restoration To Position

1. At the end of family/medical leave, an employee is normally to be reinstated as follows:

- a. Original position – the county must restore an employee to the position he/she held when the leave began unless he/she held a key position which needed to be filled during the absence.
  - b. Equivalent position – if the previous position has been filled, an employee is entitled to restoration to an equivalent position.
  - c. Conditions upon restoration of job position – the county may require an employee to report periodically on his/her status and intent to return to work, and can require certification from health care providers that the employee is able to return to work.
2. If an employee's position is determined to be key, he/she may be denied restoration when:
- a. the county shows that denying restoration is necessary to prevent substantial economic injury to its operations;
  - b. the county notifies the employee that restoration will be denied at the time it determines that substantial economic injury would occur; and
  - c. the employee already has begun the leave and elects not to return to employment within a reasonable time after receiving the county's notice.