

6. FAMILY AND MEDICAL LEAVE OF ABSENCE (FMLA).

a. General Provisions and Definitions

- (1) This policy provides employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

To qualify as FMLA leave, the employee must be requesting leave for one of the following reasons:

- (I) The birth of a child and in order to care for that child.
- (ii) The placement of a child for adoption or foster care and to care for the newly placed child.
- (iii) To care for a spouse, child or parent with a serious health condition.
- (iv) The serious health condition of the employee that makes the employee unable to perform his or her job.
- (v) Qualifying exigency leave for families of active duty service members and the National Guard and Reserves when the covered military member is on active duty or called to active duty in support of a contingency operation.
- (vi) Military caregiver leave to care for an ill or injured service member. This includes veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five (5) years preceding the date of treatment.

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

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

In general, employees who will be absent for more than three days are required to apply for FMLA leave. Employees with questions about whether a condition is covered by this policy should consult with the Personnel Office.

- (3) Qualifying exigency leave for families of members of the National Guard and Reserves. An employee whose spouse, son, daughter or parent is an active duty service member or an employee whose spouse, son, daughter or parent is in the National Guard or Reserves and has been notified of an impending call or order to active military duty or who is already on active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave will be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

- (4) Military caregiver leave to care for an ill or injured servicemember: FMLA includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. This special leave entitlement also includes veterans who are undergoing medical treatment, recuperation or therapy for serious injury, or illness that occurred any time during the five (5) years preceding the date of treatment.

b. Eligibility

Employees are eligible for Family and Medical Leave if they have worked for Utah County for a minimum of twelve months, and they have worked at least 1,250 hours during the 12 month period immediately prior to the commencement date of the requested leave.

c. Amount of Leave

- (1) Eligible employees will be allowed up to 12 weeks of FMLA leave within a twelve month period for the FMLA circumstances listed in (I) through (v) above. Beginning August 1, 2011, the FMLA eligibility year will be a twelve month rolling period, looking backward from the date the leave is to commence; therefore, no more than 12 weeks may be taken in any 12-month period.

An eligible employee may take up to 26 weeks for the FMLA circumstance (vi) above (military caregiver leave) during a leave year. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

- (2) If spouses are both working for Utah County and leave is taken for the adoption or birth of a healthy child, or to care for a sick parent, the maximum combined leave for both spouses is 12 weeks. If leave is taken to care for an ill child or spouse, each spouse is entitled to 12 total weeks of leave. If both spouses work for the County and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.
- (3) The employee must conclude leave for the birth or placement of a child for adoption or foster care within 12 months after the event. Leave may begin prior to birth or placement, as circumstances dictate.

d. Intermittent Leave

- (1) In the case of the employee's own serious health condition or that of a family member, the employee may take leave intermittently or on a reduced work schedule if medically necessary. Leave due to qualifying exigencies may also be taken on an intermittent basis.
- (2) When the leave is for the adoption or birth of a child, the employee may not take leave intermittently or on a reduced work schedule unless approved by the Department head and the Director as being for the benefit of the County.
- (3) Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. If the employee is on intermittent or reduced leave status, Utah County may temporarily transfer the employee to another position of equivalent pay and benefits in order to better accommodate the leave.

e. Use of Paid Leave

- (1) An employee who is taking FMLA leave must use all paid vacation, compensatory time, personal preference and sick leave prior to being eligible for unpaid FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the County's normal paid leave policies, such as call-in requirements. FMLA leave will run concurrently with workers' compensation leave if the reason for absence meets the definition of a serious health condition. Using paid time off benefits does not add to the total length of the leave.
- (2) Unless paid time off benefits are available, pay will be reduced for all full days of unpaid leave taken or for all hours of leave taken in a single day. Reducing pay for partial days off will not impact the exempt status of exempt employees under the Fair Labor Standards Act.

f. Employee Status and Benefits During Leave

- (1) Coverage under all group health and life insurance plans will continue during FMLA leave on the same terms as if the employee had continued to work. Both Utah County and the employee will continue to pay their respective portions of the monthly premiums as applicable. The Personnel Department will advise the employee of the payment due dates and process for submitting payment.
- (2) If the employee chooses not to return from leave, the employee may be required to repay Utah County's portion of the premiums paid. The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of the employee's leave.

g. Job Restoration.

Employees who are granted leave may be asked to provide a fitness for duty release from the health care provider. Employees will generally be returned to the same position held prior to the leave, or one that is equivalent in pay, benefits, and other terms and conditions of employment.

h. Procedure for Requesting FMLA Leave

- (1) Employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the Personnel Office. When the need for leave is foreseeable, the employee must provide at least 30 days' advance notice. When 30 days notice is not possible, the employee must provide notice as soon as practicable and explain why advance notice was not given. Generally, the employee must also comply with the department's normal call-in procedures. Within five business days of receiving this notice, Personnel will provide the employee with the required Notice of Eligibility and Rights.
- (2) Employees must provide sufficient information for the County to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the County if the requested leave is for a reason for which FMLA leave was previously taken or certified.
- (3) The County will require complete and sufficient certification for the employee's serious health condition, or that of family member, or for military family leave. The employee must respond to such a request for information within 15 days of the request or provide a reasonable explanation for the delay. Recertifications supporting the need for leave and the employee's intent to return to work may be requested periodically as allowed by law. Failure to provide complete and sufficient certification may result in a denial of continuation of leave. Medical and other certifications will be provided using the Department of Labor's certification forms.

- (4) If there is a dispute about the medical opinion provided by any physician, Utah County may require a second opinion by a physician of its choice, at its expense. If a third opinion is necessary, a third doctor may be selected, also at Utah County's expense. The third doctor must be agreed upon by both the employee and Utah County, and the doctor may not be employed on a regular basis by Utah County.

- I. Designation of FMLA Leave

After the employee has submitted the appropriate certification forms, the Personnel Office will provide the employee with a written response to the employee's request for FMLA, indicating whether or not they are eligible for FMLA leave. Employees will be informed if the leave will be designated as FMLA-protected and the amount of leave counted against the employee's FMLA entitlement. If eligible, the notice will specify any additional information required as well the employee's rights and responsibilities. If the employee is not eligible, the County will provide a reason for the ineligibility.

- j. Unlawful Acts

FMLA makes it unlawful for the County to interfere with, restrain, or deny the exercise of any right provided under FMLA, or to discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.