

# **Family and Medical Leave Handbook**



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## INTRODUCTION

The Family and Medical Leave Act of 1993 (FMLA) allows eligible employees to take up to twelve weeks of unpaid leave for certain family or medical reasons. The law provides eligible employees with important rights to job protection for absences due to the birth or adoption of a child, or for a serious health condition of the employee or a qualifying family member.

On January 28, 2008, the President signed the National Defense Authorization Act for Fiscal Year 2008 into law. The Act grants additional leave under the Family and Medical Leave Act of 1993 (FMLA). The Act creates two new categories of FMLA leave: “Active duty family leave” and “injured service member leave.”

## POLICY STATEMENT

Santa Rosa County recognizes its responsibilities to the employees to provide necessary medical and family leave and to the citizens of our community to provide timely and efficient service. Therefore, it shall be the policy of the Santa Rosa County Board of County Commissioners to establish procedures to comply with the requirements of the Family and Medical Leave Act of 1993 (FMLA) as amended from time to time.

According to this policy, accrued Annual and/or Sick leave will be substituted for the unpaid leave provided for by the FMLA. Leave under this policy will be designated and used concurrently with all other types of paid and unpaid leave including absences under Workers’ Compensation and Short or Long Term Disability.

While on FMLA leave the County will continue to pay for its portion of the employee insurances. The employee will be responsible for paying the employee contribution as well as any dependent or voluntary coverages they wish to maintain.

An employee returning from leave under this policy will be restored to his or her original job, or to an equivalent job, in accordance with relevant law. **However, the taking of leave under this policy does not entitle the employee to any greater or lesser likelihood of being restored to the employee’s position, or an equivalent position, than the rights the employee otherwise would have had if the leave were not taken.** If leave taken under this policy is exhausted and the employee requests and is granted an extension under another leave rule, the guarantees of reinstatement and benefit coverage will not extend to the leave provided pursuant to other leave rules. In addition, an employee’s use of FMLA leave will not result in the loss of any employment benefit that the employee earned or was entitled to before using FMLA leave.

## **GENERAL PROVISIONS**

In accordance with the Family and Medical Leave Act of 1993 (FMLA), related Federal regulations and the provisions of this policy, family and medical leave will be granted up to a maximum of twelve (12) weeks per fiscal year to eligible employees for the reasons stated below:

1. The birth of the employee's child and in order to care for the child (this also includes leave for a pregnant employee who becomes unable to work and leave for prenatal care);
2. The placement of a child with the employee for adoption or foster care in order to care for the child;

Entitlement to leave for the birth/placement of a child, for adoption or foster care will expire one year from the date of birth or placement. **NOTE:** If both parents work for the County, their combined leave entitlement for this reason is 12 weeks.

3. To care for the spouse, child or parent of an employee, if such family member has a serious health condition; or
4. The employee is unable to perform the functions of the position because of the employee's own serious health condition.
5. Because of any qualifying exigency (as defined by statute) arising out of the fact that a spouse, or a son, daughter, or parent of the employee 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.
6. Servicemember Family Leave. Subject to Section 103 of the FMLA, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall only be available during a single 12-month period.

Note: In addition to the limitation on leave for the birth/placement of a child for adoption or foster care, if both husband and wife work for the County, their combined leave for servicemember family leave is limited to 26 workweeks during the single 12-month period.

When an employee requests family or medical leave for his or her own serious health condition, or for any of the reasons listed above, the employee must use all available and appropriate leave credits concurrent with FMLA until all leave credits are exhausted. After all available and appropriate leave is expired, then any remaining FMLA may be used as unpaid leave. Based on information from the employee, every effort will be made to designate qualified leave as FMLA prior to taking such leave.

**A. DEFINITIONS** As used throughout this policy, the following terms will have the indicated meaning.

1. **Eligible Employee** means an employee that has been employed by the County for at least twelve (12) months and has worked at least 1,250 hours during the twelve (12) months immediately preceding the commencement of the leave.
2. **Spouse** means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized law.
3. **Parent** means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter as defined below. This term does not include parents “in law”.
4. **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 either under age 18, or age 18 or older and “incapable of self-care because of a mental or physical disability”.
5. **“Incapable of self-care”** means that the individual requires active assistance or supervision to provide daily self-care in three or more of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.
6. **“Physical or mental disability”** means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR § 1630.2(h), (i) and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, define these terms.
7. **Serious Health Condition:**
  - a. An illness, injury, impairment, or physical or mental condition that involves inpatient care (i.e. overnight stay) in a hospital, hospice, or residential medical care facility; or
  - b. Continuing treatment by a health care provider which includes:
    - a period of incapacity requiring absence of **more than three consecutive calendar days** (including nonscheduled work days) from work, school, or other regular daily activities that also involves continuing treatment by a health care provider.

- Continuing treatment by a health care provider for a chronic serious health condition which requires periodic visits for treatment, continues over an extended period of time, and may cause episodic rather than continuous periods of disability (i.e. asthma, epilepsy).
- Any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (i.e. strokes, Alzheimer's).
- A period of absence to receive multiple treatments for an injury or condition which would result in incapacitation of more than three days if not treated such as cancer (chemotherapy), severe arthritis (physical therapy), and kidney disease (dialysis).
- Any periods of incapacity due to pregnancy and prenatal care.

**NOTE: Incapacity** is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

**Treatment** includes examination to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

8. **Health Care Provider:** A doctor of medicine or osteopathy, or podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse-mid-wives and clinical social workers authorized to practice under State law and who are performing within the scope of their practice; or Christ Scientist practitioners listed with the First Church of Christ, Scientists in Boston, Massachusetts.
9. **Reduced Leave Schedule:** A leave that reduces the usual number of hours per work week, or hours per workday of an employee.
10. **Intermittent Leave:** Leave taken in separate blocks of time due to a single illness or injury.
11. **Active Duty:** As the term is defined in the Family & Medical Leave Act and the United States Code, as either may be amended from time to time.
12. **Contingency Operation:** As the term is defined in the Family & Medical Leave Act and the United States Code, as either may be amended from time to time.
13. **Covered Servicemember:** A member of the Armed Forces (including 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.

14. **Outpatient Status:** With respect to a covered servicemember, the status of a member of the Armed Forces assigned to a medical treatment facility as an outpatient, or a unit established to provide command and control of members of the Armed Forces receiving medical care as outpatients.

15. **Next of Kin:** Used with respect to an individual, means the nearest blood relative of an individual.

16. **Serious Injury or Illness:** For purposes of Servicemember Family Leave only, in the case of a member of the Armed Forces, 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.

## **B. NOTICE OF LEAVE**

When advance notice is possible, employees requesting leave must complete and submit a Leave Request Form at least 30 calendar days prior to the expected start of the leave (i.e., planned medical treatment or elective surgeries). The request must indicate the reason for the leave, the duration of the leave, and the starting and ending dates of the leave. Employees are expected to make a reasonable effort, subject to the health care provider's approval, to schedule treatment so as to not unduly disrupt the County's operations. If advance notice is not possible due to a serious health condition, the employee must submit the request as soon as possible, ordinarily within one or two business days of when the need for leave becomes known to the employee. Initial notification in this case may be verbal. If required notice is not provided, the county may delay the start of the leave to the extent of any required notice period. A family member, health care provider, or any person designated by the employee may notify the supervisor if the employee is unable to do so. When the initial request is verbal the supervisor is responsible for making sufficient inquiry into the nature of the leave so as to determine if the absence might qualify as a "serious health condition" as defined in this policy and verbally inform the employee (or caller) of any requirements under this policy.

## **C. MEDICAL CERTIFICATION**

A request for leave based on the serious health condition of the employee must also be accompanied by a "Medical Certification Statement" completed by the applicable health care provider. The employee must provide the certification, in writing within fifteen (15) days of the written request for leave. The certification must contain the date the serious health condition began; the probable duration of the condition and statement that the employee is unable to perform the functions of his or her position.

If the employee is needed to care for a spouse, child or parent, a health care provider must certify that third-party care is required and that the employee's presence would be beneficial to the patient along with an estimate of the amount of time the employee will be needed.

An employee who has taken leave because of a serious health condition or that of a family member is required by the County to obtain subsequent written re-certification of the medical condition every five (5) weeks during the duration of the condition. The County also requires an employee on leave under this provision to report periodically, in writing, at least every two (2) weeks on his or her status and the intention of the employee to return to work. Failure of the employee on leave to report periodically on his or her status may subject the employee to discipline for unexcused absences.

This certification will be treated as a confidential medical record and information will be disclosed only on a strictly need-to-know basis, unless otherwise required by Florida law.

#### **D. ACTIVE DUTY CERTIFICATION**

Certification establishing an entitlement to qualifying exigency leave is required to be provided in a timely manner. Failure to provide timely certification will result in a denial of Family Medical Leave, characterization of the leave as unscheduled and may be the basis for discipline.

#### **E. LEAVE USAGE – CONTINUOUS, INTERMITTENT OR REDUCED**

Leave may be taken on a continuous basis or, if medically necessary, on an intermittent basis when medically necessary. Intermittent leave or leave on a reduced leave schedule is not required to be granted when leave is for the birth or adoption of a child.

Continuous leave occurs when the employee is required to be off from work for a continuous block of time, without a break in leave.

Intermittent leave occurs when the employee takes leave in blocks of time, or he/she reduces their normal weekly or daily work schedule.

In the event an employee requests intermittent or reduced scheduled leave due to a family member's or the employee's own serious health condition, the Appointing Authority may transfer an employee to an alternative position in order to accommodate the leave schedule providing the employee is qualified for the position and the transfer better accommodates the County's business needs.

## **F. COMPENSATION AND COORDINATION OF FMLA AND OTHER COUNTY LEAVES**

If an employee has any accrued compensatory, sick or annual leave during an FMLA qualifying event, this paid time must be used before the unpaid leave begins. The use of paid leave does not increase, in whole or in part, the amount of FMLA leave available to an employee. Both FMLA leave and paid leaves of absence will run concurrently provided paid leave the employee may be entitled to.

- **Compensatory Leave:** An employee must first use all available accrued compensatory leave during FMLA leave.
- **Sick Leave:** Upon exhausting all accrued compensatory leave, an employee must use accrued sick leave.
- **Annual Leave:** An employee, upon exhausting all accrued sick leave, must use all accrued annual leave during a FMLA qualifying leave before being placed on LWOP.
- **Worker's Compensation:** A worker's compensation injury is considered an FMLA qualifying event. An employee can choose to use their accrued leave to supplement their worker's compensation payments.

## **G. BENEFITS COVERAGE**

The County will continue to pay the same employer contribution toward the employee's health benefits that it paid prior to the start of the leave while the employee is on approved FMLA leave. Employees on leave without pay during FMLA leave and who contribute toward health, dental, or other premiums will continue to be responsible to pay their portion. Employee-paid optional benefit premiums may be continued, without a break in coverage, when self-paid by the employee. The employee's co-payments for premiums will continue to be deducted from their paycheck as long as the employee is on paid leave.

In the event an employee fails to return to work after the period of leave expires, the County may recover any premiums the County paid for coverage during the leave period. Such recovery can be taken from any benefits or wages owed by the County to the employee.

In the event, however, that the employee fails to return to work because of the continuation, recurrence or onset of a serious health condition that would otherwise entitle the employee to take leave, or due to other circumstances beyond the control of the employee, the County will not attempt to recover such premiums. In this circumstance, the employee is required to provide, in writing to the Appointing Authority, a certification from the employee's health care provider to that effect.

## **H. RETURNING FROM LEAVE**

Employees returning from a Leave of Absence as a result of a medical condition must submit certification from the employee's health care provider stating the employee's ability to return to work and perform the essential functions of his or her job with or without an accommodation. A Return-to-Work Medical Evaluation form shall be given to the employee at the time the leave is requested, as soon as the medical circumstances surrounding the need for leave are known or as soon as practicable. The certification must be reviewed and approved by Human Resources prior to the employee performing their duties. The County may require an evaluation (at the County's expense) of the employee's health by a physician of the County's choice.

If a returning employee has a condition or limitation when returning to work, (i.e. – light duty) then the employee shall not be permitted to work until such conditions or limitations are reviewed for reasonable accommodations and authorized by Human Resources. Situations will be authorized on a case by case basis for occupational and non-occupational illnesses, injuries, or conditions.

## **I. REINSTATEMENT UPON RETURN FROM LEAVE**

Upon returning from leave, an employee has reinstatement rights under FMLA.

**FMLA:** An employee must be reinstated to either the same position held when leave began or to an equivalent position. An equivalent position is one that is virtually the same as the employee's former position in terms of pay, benefits, and working conditions and must involve the same or substantially similar duties and responsibilities.

### **Other considerations under FMLA**

The County's obligation to restore the employee to the same or an equivalent position ceases:

- If and when the employment relationship would have terminated (either through a termination or layoff action) if the employee has not taken leave;
- The employee informs the County of his/her intent not to return to work at the expiration of the leave;
- The employee fails to return to work at the expiration of the leave; or
- The employee continues on leave after exhausting his/her leave entitlement in the 12-month period.

An employee who exceeds his/her FMLA leave and remains off work under a non-FMLA leave is not entitled to reinstatement to the same or an equivalent position under the FMLA. The employee's right to reinstatement will be controlled by other applicable laws, such as those relating to worker's compensation for workplace injuries.