

ALLEGAN COUNTY EMPLOYEE HANDBOOK

Category: Employment Benefit Policy
Number: 512
Approved: February 24, 2005
Revised: April 1, 2010
Resolution: April 22, 2010
Subject: Family and Medical Leave Act Policy and Procedure



I. Policy: The County will provide eligible employees with unpaid leave for covered family and medical reasons, in compliance with the Family and Medical Leave Act (FMLA). In all respects, leaves of absence under this policy shall be administered and provided in a manner consistent with the FMLA and its regulations. Reporting and tracking of FMLA qualified time away from work is required and important for these reasons: (1) It is required by federal statute; (2) it allows for the County to more fully and consistently support employees in needed, qualified time off; and (3) it limits the potential negative consequences of employee time away from the workplace for individual departments and the organization as a whole.

II. Eligibility: Employees are eligible only if they have been employed for at least one year, have worked at least 1,250 hours over the previous 12 months, and work at a covered location. A location is covered if at least 50 employees of the County work within a 75-mile radius.

III. Definitions:

“Son or daughter” 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 the age of eighteen (18) or age 18 or older and incapable of self-care because of a mental or physical disability.

“Family member” includes children, spouse, parents, but not son-in-law, daughter-in-law or parents-in-law.

“Spouse” a husband or wife as defined or recognized under Michigan State law for purposes of marriage.

“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.

“In loco parentis” means those persons with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child.

“Serious health condition” A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either:

1. An overnight stay in a medical care facility, or
2. 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:

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- a. A period of incapacity of more than three consecutive full calendar days combined with
 - At least two visits to a health care provider within certain time frames, or
 - One visit to a health care provider within a certain time frame and a regimen of continuing treatment;
- b. Incapacity due to pregnancy;
- c. Incapacity due to a chronic condition that requires at least two visits to a health care provider per year for treatment; or
- d. Permanent or long-term incapacity, or conditions requiring multiple treatments.

"Health Care Provider":

1. Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or
2. Nurse practitioners or clinical psychologists, authorized to practice, and performing within the scope of their practice, under state law; or
3. Any health care provider recognized by the employer or the employer's group health plan.

"Key Employee" a salaried employee who is among the highest paid ten percent of employees within 75 miles of the work site.

IV. See Also:

- Labor Union Contracts where applicable
- Application for Family or Medical Leave

V. Basic Leave Entitlement: Eligible employees may take up to a total of 12 workweeks of leave in any 12-month period for the following reasons:

1. To care for the employee's child after birth, adoption, or placement for foster care;
2. To care for a spouse, parent or child with a serious health condition;
3. For the employee's own serious health condition that prevents the employee from working; or
4. To address certain qualifying exigencies resulting from a spouse, parent, son or daughter who is either (1) a member of a regular component of the Armed Forces and is deployed (or has been notified of an order of deployment) with the Armed Forces to a foreign country, or (2) a member of a reserve component of the Armed Forces and is deployed (or has been notified of an order of deployment) with the Armed Forces to a foreign country under a call or order to active duty. Qualifying exigencies may include attending certain military events,

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arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment and reintegration briefings.

The amount of FMLA leave time an employee has available (for the above reasons) on any given date is equal to 12 weeks minus the amount the employee has used in the preceding 12 months.

VI. Service member Family Leave: Eligible employees may take up to 26 weeks of FMLA leave during a single 12-month period to care for a spouse, parent, son, daughter or next of kin who is a covered service member. A covered service member is either: (1) a member of the Armed Forces who is undergoing medical treatment, recuperation or therapy, or is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness, or (2) a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness and who was a member of the Armed Forces at any time during the five years preceding the date on which the veteran underwent that medical treatment, recuperation, or therapy. The term “serious injury illness” means an injury or illness that was incurred or aggravated in the line of duty, or, in the case of a veteran, was incurred or aggravated in the line of active duty and manifested itself either before or after the service member became a veteran. During the single 12 month period, the employee is entitled to a total of 26 weeks of FMLA leave for all qualifying reasons.

VII. Use of Leave: When medically necessary, leave may be taken on an intermittent basis or by arranging a reduced work schedule. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the County’s operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

VIII. Procedure:

- 1. Notification:** Employees must notify their supervisor and the Human Resources Department of any need to take FMLA leave (including any absence, late arrival, or early leaving related to FMLA leave). Employees must give this notice at least 30 days in advance of a foreseeable need for FMLA leave (as soon as practicable in the case of foreseeable leave due to a qualifying exigency). If it is impossible to give 30 days advance notice, employees must notify their supervisor and the Human Resources Department as soon as practicable.

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Employees must follow all County rules for calling in to report absence, tardiness, or early leaving.

Whenever requesting FMLA leave, employees must provide sufficient information for their supervisor and the Human Resources Department to determine whether the leave qualifies as FMLA leave and the anticipated timing and duration of the leave. Employees must also inform their supervisor and the Human Resources Department if the requested leave is for a reason for which FMLA leave was previously taken or certified.

Once an employee has requested FMLA leave, the County will inform the employee whether he or she is eligible to take FMLA leave and explain the employee's rights and responsibilities under FMLA. After the employee returns all required forms, the County will inform the employee whether or not the leave will be designated as FMLA leave. Failure to follow the above notice requirements may result in the delay and/or denial of FMLA leave.

The County is responsible for determining if an employee's use of paid leave counts as FMLA leave. The County may designate leave as FMLA leave if it meets the criteria of the FMLA even when the employee does not specifically request FMLA leave.

- 2. Medical Certification:** When the County requests it, an employee must provide complete and sufficient certification from a health care provider verifying the need for leave (at the employee's expense). The County will provide a form for this purpose. In most cases, a "doctor's note" will not be accepted as appropriate medical certification. The employee must return the completed certification form to the County within 15 days. Failure to do so may result in the delay and/or denial of FMLA leave. The County may require subsequent opinions from a different health care provider (at the County's expense). The County may also require periodic re-certifications of the need for leave.
- 3. Contact with the County during the Leave:** While on FMLA leave, employees are required to report to the Human Resources Department regarding their status and intention to return to work. Likewise, it may be necessary for the County to contact an employee for those reasons. If the employee cannot be reached at the phone number on file with the County and the leave is in excess of five working days, the employee must provide a telephone number and address at

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which they can be contacted.

4. **Wages and Insurance Benefits during FMLA Leave:** Wages are not paid during FMLA leave. The County will maintain the employee's health coverage (including dental and vision if available) under any group health plan for covered FMLA leave as long as the employee maintains his or her contributions during the leave. An employee who has an obligation to pay part of the health care premiums during FMLA leave must make arrangements with the Human Resources Department to continue the payments during such FMLA leave.
5. **Using Paid Leave Time During FMLA Leave:** The County requires that an employee on FMLA leave use paid time off (PTO) to cover all hours not compensated under the short-term disability program until the employee's PTO bank reaches a balance of 26 hours, after which the employee is only required to use enough PTO to cover mandatory deductions from pay (e.g., the employee's share of health care premiums). Subject to this requirement, an employee taking FMLA leave may elect to use paid leave that the employee has available under the County's policies. In order to use paid leave during FMLA leave, the employee must comply with the County's policies concerning paid leave. Whether or not paid leave is available, all time off which is covered by FMLA will be charged against the employee's yearly FMLA allowance.
6. **Returning to Work:** Before returning to work from a leave due to the employee's own serious health condition, the employee must provide medical verification of his or her fitness for duty. The County will provide a list of the essential functions of the employee's job for that purpose. If the employee is taking intermittent or reduced work schedule leave, the County may require a certification of fitness to return to duty under certain circumstances.

Upon return from FMLA leave, most employees will be returned to their original position or an equivalent one, with equivalent pay, benefits and other employment terms. Use of FMLA leave will not result in the loss of any benefit that accrued prior to the start of the leave. Employees will not continue to accrue benefits while taking FMLA leave.

IX. Termination of FMLA Leave: An employee's FMLA leave and accompanying benefits will cease under the following circumstances:

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1. The employment relationship would have terminated if the employee had not taken FMLA leave;
2. The employee informs the County of his or her intent not to return from leave;
3. The employee fails to return from leave with the necessary certification;
4. The employee continues on unapproved leave after exhausting his or her FMLA leave entitlement;
5. The employee fraudulently obtains FMLA leave or makes material misrepresentation(s) in order to receive leave to which the employee would not otherwise be entitled;
6. While on FMLA leave, the employee engages in conduct that is inconsistent with the need for leave (e.g., engaging in recreational activities while on leave to care for a family member; engaging in activities demonstrating that the employee is not incapacitated while on leave for the employee's own serious health condition); or
7. While on FMLA leave, the employee begins employment with another employer or engages in self-employment without the prior approval of the Director of Human Resources.

If an employee on an FMLA leave decides not to return to work, in most situations the County is entitled to recover its share of health plan premiums during the period of FMLA leave.

X. Enforcement: Any employee who believes that his or her rights under the FMLA have been violated is to report this immediately to Director of Human Resources. Any complaint will be investigated thoroughly and promptly. No employee will be retaliated against for making a good faith complaint. The FMLA also states that employees can file a complaint with the U.S. Department of Labor or in an appropriate court.