

SECTION 4.0: FAMILY AND MEDICAL LEAVE

- A. In accordance with applicable federal law, employees who have been employed for at least one (1) year with the Board of County Commissioners, and for at least 1,250 hours during the preceding twelve-month period are eligible for family and medical leave (FML) for the following reasons:
1. the birth of a son or daughter, and to care for the newborn child;
 2. the placement of a child with the employee for adoption or foster care (leave must be taken within twelve (12) months of placement);
 3. to care for the employee's spouse, son, daughter or parent with a serious health condition;
 4. a serious health condition that makes the employee unable to perform the essential functions of the employee's position;
 5. because of any *qualifying exigency* arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty"; or
 6. to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember (military caregiver leave).
- B. For purposes of this policy, the following definitions apply:
1. *Adoption* - means legally and permanently assuming the responsibility of raising a child as one's own.
 2. *Covered Active Duty* – for a member of the Regular Armed Forces, means duty during the deployment of the member with the Armed Forces to a foreign country. For a member of the Reserve components of the Armed Forces (members of the National Guard and Reserves), it means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.
 3. *Foster care* - means 24-hour care for children in substitution for, and away from, their parents or guardian. Such placement is made by or with the agreement of the State as a result of a voluntary agreement between the parent or guardian that the child be removed from the home, or pursuant to a judicial determination of the necessity for foster care, and involves agreement between the State and foster family that the foster family will take care of the child.
 4. *Next of kin of a covered servicemember* - means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter.
 5. *Parent* - means biological parent, adoptive parent, step or foster father or mother, or any other individual who stood in *loco parentis* to an employee when the employee was a son or daughter. This term does not include parents "in law."

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6. *Parent of a covered servicemember* - means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law."
 7. *Qualifying exigency* - means (a) short-notice deployment; (b) military events and related activities; (c) childcare and school activities; (d) financial and legal arrangements; (e) counseling; (f) rest and recuperation; (g) post-deployment activities; and (h) additional activities mutually agreed upon by the employee and employer, but not enumerated in the regulations.
 8. *Servicemember with a serious injury or illness* - means member of the Armed Forces, including National Guard or Reserves, who has suffered an injury or illness incurred in the line of duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating.
 9. *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 the age of 18, or age 18 or older and incapable of self-care because of mental or physical disability [see also 29 CFR 1630.2(h), (i), and (j)].
 10. *Son or daughter on active duty or call to active duty status* - means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.
 11. *Son or daughter of a covered servicemember* - means the servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the servicemember stood in loco parentis, and who is of any age.
 12. *Spouse* - means 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.
- C. All qualifying leave under this policy will be counted against an employee's entitlement under the federal Family and Medical Leave Act. The maximum duration of a leave for any reason delineated in Paragraph A.1-5 shall be twelve (12) weeks in any calendar year. The maximum duration of a leave for reason in Paragraph A.6 shall be twenty-six (26) weeks during a single twelve (12) month period, which begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date.
- D. In all cases and in order for Family and Medical Leave or Military Family Leave to be approved, all portions of one or more of the following must be completed and submitted to the Human Resources Department in a timely manner (forms may be obtained from the Human Resources Department):
- 1) Certification of Health Care Provider for Employee's Serious Health Condition;

- 2) Certification of Health Care Provider for Family Member's Serious Health Condition;
 - 3) Certification of Qualifying Exigency for Military Family Leave; or
 - 4) Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave.
- E. If the requested leave is because of an employee's serious health condition, the employee must demonstrate that the probable length of the illness, injury, or condition will not exceed the maximum duration established in Paragraph C. If the employee is unable to demonstrate likely improvement and return to work within the maximum period, said employee may be separated due to disability, under Chapter 34 of the Hamilton County Administrative Regulations.
- F. In any case where the Human Resources Director, or designee, has any doubt or disagreement with the employee's certification, the HR Director, or designee, may, at the employer's expense require that an additional opinion be obtained from a health care provider designated by Human Resources. In addition, the HR Director, or designee, may require periodic recertifications during the leave. (See Section 2.5 of this manual.)
- G. If an employee is unable to return to active work status within the maximum time allowed for the leave because of the same illness, injury or condition, the employee will be granted a disability separation.
- H. If leave is for the birth or adoption of a child, an employee may take leave on an "intermittent" or "reduced leave" schedule only with prior employer agreement. This leave must be concluded within twelve (12) months of the date of birth or from the date of placement of a child for adoption or foster care. If leave is because of a "serious health condition," intermittent or reduced leave may be approved when medically necessary. Employees approved for intermittent or reduced leave for planned medical treatment must make a reasonable effort to schedule treatment so as to not unduly disrupt the employer's operations. An employee using intermittent leave may be transferred temporarily to an alternative position, with equal pay and benefits, which better accommodates recurring periods of leave.
- I. FML shall be without pay, except that employees shall exhaust all accrued sick leave, compensatory time, earned personal days, and vacation balances, as appropriate, prior to going on unpaid leave. (Sick leave shall be substituted only for reasons set forth in Section 4.1 of this manual.)
- J. When FML is used while receiving Workers' Compensation, that program shall override the requirement described in Paragraph I. above.
- K. If the employee's need for leave is foreseeable, the employee must provide at least 30 days advance notice before the date of leave. Where a need for leave is unforeseen, notice must be provided within one half hour of the employee's

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normal start time or as soon as practicable. If the need for leave is foreseeable and the employee fails to give proper notice, the Appointing Authority may deny leave until 30 days after notice is provided. Employees shall make a reasonable effort to schedule leave so as to minimize disruption to County operations.

- L. When a husband and wife are both employed by the Board of County Commissioners and are entitled to leave because of the birth or placement of a child, or to care for a sick parent, the aggregate period of family leave shall be limited to twelve (12) weeks.
- M. During a period of FML, an employee will be retained on the County's health plan, if applicable, under the same conditions that applied before leave commenced. To continue health coverage, the employee must continue to make any contributions that he or she made to the plan before taking leave. Failure of the employee to pay his or her share of the health insurance premium may result in loss of coverage.

If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse the County for payment of health insurance premiums during the leave, unless the reason the employee fails to return is the presence of a serious health condition which prevents the employee from performing his or her job or to circumstances beyond the employee's control.

- N. An employee who takes leave for his or her own serious health condition will be required to obtain a medical certification from his or her health care provider that the employee is able to resume work. Such return-to-work certifications may not be required from employees who take intermittent leave.
- O. Upon completion of FML, the employee shall be returned to the same or similar position within the employee's former classification. If the employee's former classification no longer exists, the employee shall be assigned, with the concurrence of the Human Resources Department, to a position in a classification similar to that which he/she formerly occupied.
- P. The employee may be returned to active pay status prior to the originally scheduled expiration of the leave if the employee gives notification to Human Resources at least two (2) working days prior to the employee's planned return.
- Q. The failure of an employee to return to work upon the expiration of a family or medical leave of absence will constitute a resignation unless an extension is granted. Requests for extensions must be submitted in writing to Human Resources, as soon as the employee realizes that she or he will not be able to return at the expiration of the leave period, and no later than within one half hour of the employee's normal start time on the expected return to work date.

- R. Failure to comply with the requirements of this policy could result in a denial or delay of leave, a loss of rights under the Family and Medical Leave Act, and/or disciplinary action up to and including termination
- S. The Human Resources Department shall establish, maintain and communicate standard operating procedures (SOPs) for effectively administering this policy in accordance with applicable laws and regulations and in cooperation with affected departments and agencies.