2010-351

BOARD OF COUNTY COMMISSIONERS SARPY COUNTY, NEBRASKA

RESOLUTION AMENDING THE FAMILY AND MEDICAL LEAVE ACT POLICY

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, Sarpy County has adopted certain policies and procedures regarding the performance of County business and of employees of the County, and

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that the revised Family and Medical Leave Act Policy, a copy of which is attached hereto, is hereby adopted into the Sarpy County Policy and Procedure Manual, and future practices of the County shall be in conformity with the same.

BE IT FURTHER RESOLVED that all previous Resolutions or parts of Resolutions of the Sarpy County Board of Commissioners on said subjects or in conflict with the provisions of this Resolution are hereby repealed.

Dated this 19th day of October, 2010.

Moved by Rusty Hike seconded by Tom Richards, that the above Resolution be adopted. Carried.

YEAS:	NAYS:	ABSENT:
Rusty Hike	none	Rich Jansen
Tom Richards		

ABSTAIN:

Jim Nekuda

Debra J. Houghtaling
County Clerk

DEBRA J. HOUGHTALING, COUNTY CLERK
SEAL
SARPY COUNTY, NEBRASKA

Approved as to form:

County Attorney

POLICIES & PROCEDURES MANUAL

TOPIC: *Family and Medical Leave*	**APPROVED:** *July 20, 2004* **REVISED:** *October 19, 2010*
POLICIES & PROCEDURES MANUAL: *Employee Benefits*	**Pages:** *1 of 7*

In accordance with the Family and Medical Leave Act (FMLA), effective August 5, 1993, and as amended, Sarpy County will grant job protected unpaid family and medical leave to eligible employees for up to 12 weeks per 12-month period for any one or more of the following reasons:

- for the birth and care of a newborn child of the employee or placement with the employee of a son or daughter for adoption or foster care (leave for this reason must be taken within the 12-month period following the child's birth or placement with the employee);
- to care for a spouse, son, daughter, or parent with a serious health condition;
- to take medical leave when the employee is unable to work because of a serious health condition; **or**
- for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty (or been notified of an impending call to active duty status) as a member of (1) any member of the Regular Armed Forces who is deployed to a foreign country (regardless of the nature of the service performed in that foreign country and regardless of whether it is in support of a contingency operation); and (2) any member of the Reserves or National Guard who is on federal active duty in a foreign country or is called to federal active duty in a foreign country, provided that such active duty is in support of a contingency operation

Sarpy County will also grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness up to a total of **26 weeks** of leave during a "single 12-month period" to care for the servicemember. This caregiver leave is for those who were members of the Armed Forces (including the National Guard and Reserves) at any point in time within five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy.

Coverage and Eligibility

To be eligible for FMLA benefits, an employee **must**:

- have worked for Sarpy County for at least twelve months; and
- have worked at least 1,250 hours over the previous twelve-month period.

Definitions

Twelve-Month Period - means a rolling twelve-month period measured backward from the date an employee uses any FMLA leave.

Single Twelve-Month Period – means a twelve-month period beginning with the first use of Military Caregiver leave.

Spouse - does not include unmarried domestic partners. If both spouses work for Sarpy County their total leave in any twelve-month period may be limited to an aggregate of twelve weeks if the leave is taken for either the birth or placement for adoption or foster care of a child or to care for a sick parent (or 26 weeks if leave to care for a covered servicemember with a serious injury or illness is also used).

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 (A) under 18 years of age; or (B) 18 years of age or older and incapable of self-care because of a mental or physical disability.

Health Care Provider – means (1) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or (2) any other person determined by the Secretary of Labor to be capable of providing health care services.

Serious Health Condition - means an illness, injury, impairment, or physical or mental condition that involves:

- Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (*i.e.*, inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a health care provider, which includes:

(1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, which **also** includes:

- treatment two or more times by or under the supervision of a health care provider (*i.e.*, in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); **or**
- one treatment by a health care provider (*i.e.*, an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment; **or**

(2) Any period of incapacity related to pregnancy or for prenatal care; **or**

(3) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity; **or**

(4) A period of incapacity that is permanent or long-term due to a condition for which treatment may be ineffective and which requires the continuing supervision of a health care provider; **or**

(5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

Military Caregiver Leave – Up to a total of 26 workweeks during a "single 12-month period" to care for the servicemember. A covered servicemember is a current 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 otherwise on the temporary disability retired list, for a serious injury or illness. A serious injury or illness is one that was incurred by a servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating, or can include an injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces. The definition adds that, for veterans, the injury or illness may manifest itself before or after the member became a veteran. The 'single 12-month period' for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the 'single 12-month period.'

Qualifying Exigency Leave – include

- 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;
- Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support/assistance programs and information briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status;
- Certain childcare and related activities arising from the active duty or call to active duty status, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or day care facility if they are necessary due to circumstances arising from the active duty or call to active duty;
- Making or updating financial and legal arrangements to address the covered military member's absence; to act as the covered military member's representative before a federal, state, or local agency for purposes of obtain, arranging, or appealing military service benefits while the covered military member is on covered active duty or call to covered active duty status and for a period of 90 days following the termination of the covered military member's active duty status.
- Attending counseling provided by someone other than a health care provider for oneself, the military member, or the child or the military member, the need for which arises from the active duty or call to active duty status;
- To spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and evens, and other official ceremonies or programs 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
- Any other event that the employee and employer agree is a qualifying exigency.

Intermittent or Reduced Leave

An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, for a qualifying exigency arising out of the active duty status or call to active duty of a covered military member, or because of a serious health condition of the employee when "medical necessary."

1. "Medically necessary" means there must be a medical need for the leave so that the leave can best be accomplished through an intermittent or reduced leave schedule.
2. The employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is foreseeable based on scheduled medical treatment.
3. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.
4. An employee may take leave intermittently or on a reduced leave schedule for birth or for an adoption or foster care of a child only with the Elected Official/Department Head's consent.
5. For part-time employees and those who work variable hours, the family and medical leave entitlement is calculated on a pro rata basis. A weekly average of the hours worked over the twelve weeks prior to the beginning of the leave should be used for calculating the employee's normal workweek.

Substitution of Paid Leave

1. An employee will be required to substitute accrued paid sick leave, vacation leave, and/or compensatory leave, which use will be determined by the terms and conditions of Sarpy County's normal leave policy.
2. When an employee has used accrued paid leave for a portion of FMLA leave, the employee may request an additional period of unpaid leave to be granted so that the total of paid and unpaid leave provided equals 12 weeks (26 weeks for Military Caregiver Leave).

Notice Requirement

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. A "Request for FMLA Leave" form must be completed by the employee and submitted to their Official / Department Head. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable. When the need for leave is not foreseeable, the employee must provide notice as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the department's usual and customary notice and procedural requirements for requesting leave.

Certification

Sarpy County requires that an employee's request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification from a health care provider. Sarpy County may require second or third medical opinions (at its own expense), periodic recertification of a serious health condition, and a "Fitness for Duty' report to return to work. Sarpy County may use a health care provider, a Personnel Representative, or a Management Official – but not the employee's direct supervisor – to authenticate or clarify a medical certification of a serious health condition. Medical Certification must be provided by the employee within fifteen days after FMLA leave is requested, or as soon as is reasonably possible. If certification is not provided, an employee's leave will not be considered FMLA leave.

Requests for military family leave must be supported by an appropriate certification. Sarpy County will require that:

- Leave for a qualifying exigency be supported by a copy of the covered military member's active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting a third party;
- Leave to care for a covered servicemember with a serious injury or illness be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family.

All documentation related to the employee's or family member's medical condition will be held in strict confidence and maintained in the employee's medical records file.

Effects on Benefits

1. An employee granted a leave under this policy will continue to be covered under Sarpy County's group health insurance plan, life insurance plan and long-term disability plan under the same conditions as coverage would have been provided if the employee had continued in employment consecutively for the duration of such leave.

2. Employee contributions will be required either through payroll deduction or by direct payment to Sarpy County. The employee will be advised in writing at the beginning of the leave period as to the amount and method of payment. Employee contribution amounts are subject to any change in rates that occurs while the employee is on leave.

3. If an employee's contribution is more than thirty days late, Sarpy County may terminate the employee's insurance coverage. Sarpy County must provide fourteen (14) days notice in the event of termination of an employee's insurance coverage under these circumstances.

4. If Sarpy County pays the employee contributions missed by the employee while on leave, the employee will be required to reimburse Sarpy County for delinquent payments (on a payroll deduction schedule) upon return from leave. The employee will be required to sign a written statement at the beginning of the leave period authorizing the payroll deduction for delinquent payments.

5. If the employee fails to return from unpaid family/medical leave for reasons other than (1) the continuation of a serious health condition of the employee or a covered family member, or (2) circumstances beyond the employee's control, Sarpy County may seek reimbursement from the employee for the portion of the premiums paid by Sarpy County on behalf of that employee during the period of leave. The employee must provide certification within thirty (30) days for failure to return for either reason.

6. An employee is not entitled to seniority or benefit accrual during periods of unpaid leave but will be entitled to return to the employee's position or to an equivalent position at the end of the leave.

Job Protection

1. If the employee returns to work within twelve weeks following FMLA leave, he/she will be reinstated to his/her former position or an equivalent position with equivalent pay, benefits, status and authority.

2. The employee's restoration rights are the same as they would have been had the employee not been on leave. Thus, if the employee's position would have been eliminated or the employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from leave.

3. If the employee fails to return within twelve weeks following FMLA leave, the employee will be reinstated to his/her same or similar position, only if available, in accordance with applicable laws. If the employee's same or similar position is not available, the employee may be terminated.

Family/Medical Leave Forms To Be Submitted By the Employee*

- Request for Family Medical Leave* (available from the Personnel Department or on the County Intranet site)

  *Upon submission and based upon approval, the employee may then be provided with and required to submit:

- Health Care Provider Certification - Family Member/Serious Health Condition or Employee Serious/Health Condition
- Certification of Qualifying Exigency – for Military Leave
- Certification for Military Caregiver Leave – for Injured/Ill Covered Servicemember.
- Fitness for Duty to Return From Leave

Please contact the Sarpy County Personnel Department for additional information.

Sarpy County Personnel Department

1308 Gold Coast Road
Suite 200
Papillion, NE 68046-3019

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Website: www.sarpy.com

October 19, 2010

TO: Sarpy County Board of Commissioners

FR: Linda Welles, Personnel

RE: Revision to Family and Medical Leave Act (FMLA) Policy and Procedure Manual

Along with previous changes to FMLA, the U.S. Department of Labor has also recently clarified the definition of "son and daughter" for FMLA eligibility purposes. This clarification will ensure that an employee who assumes the role of caring for a child receives parental rights to family leave regardless of the legal or biological relationship. The FMLA defines son or daughter as a "biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is (a) under 18 years of age; or (b) 18 years of age or older and incapable of self-care because of a mental or physical disability."

Changes to FMLA regulations necessitate a revision to the current policy to meet Department of Labor requirements.

Therefore, Personnel has created the attached revision that will supersede the current policy that is included in the Policies & Procedures Manual.

As always, please contact me if you have any questions.

Sincerely,

Linda K. Welles

Linda K. Welles: Administrator
Personnel Department
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cc: Mark Wayne
Scott Bovick
Debra Houghtaling