



PERSONNEL POLICY BULLETIN



Family and Medical Leave Act

This Bulletin is intended to provide a summary of some of the Family Medical Leave Act (FMLA) Regulations. To the extent that there is a difference between this Bulletin and the FMLA Regulations, the FMLA Regulations take precedent. For a complete copy of the FMLA Regulations, please visit the Department of Labor's Website: <http://www.dol.gov/whd/fmla/>

Policy Statement

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:

- A. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter (leave for this reason must be taken within the 12-month period following the child's birth);
- B. Because of the placement of a son or daughter with the employee for adoption or foster care (leave for this reason must be taken within the 12-month period following the placement with the employee);
- C. In order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition; and
- D. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

The FMLA also includes certain military family leave provisions:

- *Military Caregiver Leave:* Entitles eligible employees who are the spouse, son, daughter, parent, or next of kin of a covered servicemember (current member or veteran of the National Guard, Reserves, or Regular Armed Forces) with a serious injury or illness incurred or aggravated in the line of duty to take up to 26 workweeks of FMLA leave during a single 12-month period to care for their family member.
- *Qualifying Exigency Leave:* Entitles eligible employees to take up to 12 workweeks of FMLA leave in a 12-month period for a "qualifying exigency" related to the foreign deployment of the employee's spouse, son, daughter, or parent. The qualifying exigency must be one of the following:
 - Short-notice deployment;
 - Military events and activities;
 - Child care and school activities;



PERSONNEL POLICY BULLETIN



Family and Medical Leave Act

- Financial and legal arrangements;
- Counseling;
- Rest and recuperation;
- Post-deployment activities, and
- Additional activities that arise out of active duty provided that the employer and employee agree, including agreement on timing and duration of the leave.

Coverage and Eligibility

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

- Have worked for Sarpy County for at least twelve months. The 12 months need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven (7) years. Separate periods of employment will be counted if the break in service exceeds seven (7) years due to National Guard or Reserve military service obligations; **and**
- Have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. The 1,250 hours do not include time spent on paid or unpaid leave.

Definitions

Twelve-Month Period: means a rolling 12-month period measured backward from the date an employee uses any FMLA leave.

Single Twelve-Month Period: means a 12-month period beginning with the first use of Military Caregiver leave.

Spouse: means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either:

- Was entered into in a State that recognizes such marriages; or
- If entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.



PERSONNEL POLICY BULLETIN



Family and Medical Leave Act

If both spouses work for Sarpy County and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the spouses may only take a combined total of 12 weeks of leave. If both spouses work for Sarpy County and each wishes to take leave to care for a covered injured or ill servicemember, the spouses may only take a combined total of 26 weeks of leave.

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 (A) 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 (B) 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 either:

- 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 seven (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 seven (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**



PERSONNEL POLICY BULLETIN



Family and Medical Leave Act

(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: this leave includes the following:

- 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



PERSONNEL POLICY BULLETIN



Family and Medical Leave Act

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 events, 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 "medically necessary." "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.

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.

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.

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.

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.



PERSONNEL POLICY BULLETIN



Family and Medical Leave Act

Substitution of Paid Leave

- 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 the applicable Collective Bargaining Agreement, Personnel Rule and Regulation, or Sarpy County's normal leave policy.
- 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.

An "Application for Family and Medical Leave Form" must be completed by the employee and submitted to the Human Resources Department. 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, and the employee must comply with the Department's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

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.

Documentation will be sent via certified mail to the address of record. It is the employee's responsibility to retrieve correspondence as part of the FMLA process.

Sarpy County may require second or third medical opinions (at its own expense), and periodic re-certifications of serious health conditions. It will require a "Fitness for Duty" form to return to work prior to the employee returning to work in cases involving the employee's own serious health condition. Sarpy County may use a health care provider or a Human Resources Representative 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



PERSONNEL POLICY BULLETIN



Family and Medical Leave Act

requested, or as soon as is reasonably possible. If certification is not provided, an employee's leave will not be considered FMLA leave.

It is the employee's responsibility to ensure certification is given to their Health Care Provider. It is also the employee's responsibility to manage the certifications associated with ongoing medical conditions.

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.

Designation

Absent unusual circumstances, within five (5) business days after the employee has submitted the appropriate certification form, the Human Resources Department will complete and provide the employee with a written response to the employee's request for FMLA leave.

It is the employee's responsibility to ensure their Medical Certification paperwork is current.

Effects on Benefits

- 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.
- 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.



PERSONNEL POLICY BULLETIN



Family and Medical Leave Act

- If an employee's contribution is more than thirty days late, Sarpy County may terminate the employee's insurance coverage. Sarpy County must provide 14 days' notice in the event of termination of an employee's insurance coverage under these circumstances.
- 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.
- If the employee fails to return from unpaid family/medical leave for reasons other than (A) the continuation of a serious health condition of the employee or a covered family member, or (B) 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 30 days for failure to return for either reason.
- An employee will be entitled to return to the employee's position or to an equivalent position at the end of the leave.

Job Protection

- If the employee returns to work within 12 weeks following FMLA leave, they will be reinstated to their former position or an equivalent position with equivalent pay, benefits, status, and authority.
- 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.
- If the employee fails to return within 12 weeks following FMLA leave, the employee will be reinstated to their 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.