

**HR – LEAVE MANAGEMENT**  
**Family and Medical Leave Act (FMLA)**  
**420.09**

**PURPOSE**

FMLA entitles eligible employees to take up to 12 weeks of unpaid, job-protected leave each year for specified family and medical reasons and for qualified exigencies for certain family members of the Armed Forces on active duty or who are called to active duty in support of a contingency operation. Eligible employees can take up to 26 weeks of military caregiver leave in a single 12 month period to care for a current member of the Armed Forces who has a serious injury or illness incurred in the line of duty while on active duty.

**POLICY**

Employees who have been employed at least twelve (12) months and have worked at least 1,250 hours during the twelve (12) month period preceding the commencement of the leave.

Eligibility

Definitions

1. “Serious Health Condition” is an illness, injury, impairment or physical or mental condition that involves (a) inpatient care in a hospital, hospice or residential medical care facility; and/or (b) continuing treatment by a health care provider.
2. “Parent” includes a biological parent or an individual who stood on loco parentis to the employee.
3. “Child” includes biological children, adopted children, foster children, legal wards.
4. “Spouse” includes only the legal marital partner of the employee.
5. “Health Care Providers” includes doctors of medicine or osteopathy; podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives and clinical social workers who are authorized to practice in the State of Georgia, Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts, and any health care provider authorized to practice in the State of Georgia.

Reasons for leave

An employee is eligible for up to twelve (12) weeks of leave annually for one or more of the following reasons:

1. Birth of a child and to care for that child (entitlement to leave for this reason expires at the end of one year after birth of the child and the employee is to provide at least 30 days notice, if foreseeable); or
2. Placement of child for adoption or foster care of a child (entitlement to this leave expires one year after placement of the child, and if foreseeable, employee is to provide at least 30 days

notice). Foster care is defined as requiring State action rather than just an informal arrangement to take care of another person's child; or

3. Serious personal health condition making employee unable to perform his/her job functions more than (3) three calendar days: or

4. Care of a parent, spouse, or child with a serious health condition. A qualifying child must be under 18 years of age or, if older, incapable of self care due to a physical or mental disability.

#### Conditions of Leave

1. Employee is required to use accrued sick and vacation time prior to requesting Family and Medical Leave.

2. Employee must give 30 days notice for all requests for leaves of absence for any planned medical treatment, if possible.

3. All requests for leaves of absence for a serious medical condition of the employee, spouse, parent or child may be accompanied by a physician's certification of the existence of such medical condition. Re-certification may be required every 4 weeks during a continuous leave of absence.

4. Intermittent leave or a reduced schedule of work may be permitted for leave granted for serious health condition of employee, spouse, child or parent. The County reserves the right to temporarily transfer the employee to an alternate position or shift with equivalent pay and benefits if the position better accommodates the occurring period of leave than the employee's regular position.

5. If a husband and wife are both employed by the County, a combined total of 12 weeks of leave are applicable for a qualifying event.

#### Responsibilities

1. Employee: The employee requesting family and medical leave must complete a FMLA Application and submit it to his/her department head for approval and forward to the Director of Human Resources. Upon request, the employee may be required to provide a Certificate of Health Care Provider form within 15 days of the request. Timely payment of any contributions or premiums due for coverage is required. Re-certify every 4 weeks during a continuous leave. Notify Department Head, 5 days prior to the employee's planned return.

2. Department: The Director, Chief or Department Head is required to approve leave for eligible employees who meet the criteria as outlined in this regulation. Submit leave requests on behalf of employee when applicable conditions of leave exist. Supervisors are prohibited from discriminating against employees who take family and medical leave in employment decisions such as performance appraisals, promotions or disciplinary actions. Departments are required to keep posted the poster notifying employees of the provisions of the FMLA. If an employee notifies a supervisor of a need for leave which may be eligible under this policy, the supervisor should inquire further of the employee to determine if FMLA is appropriate.

3. Department of Human Resources: The Department of Human Resources will serve as advisor to employees and directors, chiefs or department heads on the requirements of eligibility for family and medical leave and provisions of FMLA. The Department of Human Resources will be responsible for providing the employee with an Employer Response to Employee Request for Family or Medical Leave form. All medical records pertaining to family and medical leave will be maintained in a confidential employee medical file in the Department of Human Resources. Department of Human Resources will maintain records of FMLA taken by County employees.

#### Benefits During Leave

The County will continue to pay their portion of applicable benefits throughout the duration of the leave. Employees will be required to continue to make any contributions/premiums that they made prior to taking leave. Employees who fail to pay their portion may result in loss of coverage.

1. Health Insurance: The County will provide and pay for the same health care coverage during this twelve (12) week Family and Medical Leave in the same manner as for active employees.

2. Life Insurance: The County will provide and pay for the same life insurance coverage during this twelve (12) week Family and Medical Leave in the same manner as for active employees.

3. Reimbursement Benefits: The County will provide and pay for the same reimbursement benefits during this twelve (12) week Family and Medical Leave in the same manner as for active employees.

4. Long-Term Disability: The County will provide and pay for long-term disability during this twelve (12) week Family and Medical Leave in the same manner as for active employees.

5. Short -Term Disability: The employee will be responsible for timely payment of this benefit during this twelve (12) week Family and Medical Leave.

6. Optional Benefits: The employee will be responsible for timely payment of these benefits during this twelve (12) week Family and Medical Leave.

#### Restoration of Employment Following Leave

Notification to return to work must be given to the Director, Chief or Department Head 5 days prior to the employee's planned return.

#### Failure to Return to Work

Employees who fail to return to work upon expiration of the leave will be subject to termination unless an extension is granted.

#### Use of Paid Leave and Family and Medical Leave

An employee is required to take any available paid sick leave or vacation prior to requesting Family and Medical Leave. Accrued sick leave must be used first, then remaining leave time.

An employee has the option of using accrued compensatory time. Family and Medical Leave is taken consecutive to paid leave. For example, if an employee has available two weeks of vacation, then a 12 week Family and Medical Leave, the leave would consist of 2 paid vacation weeks and 12 unpaid leave weeks.

### Exigency Leave

The National Defense Authorization Act for Fiscal Year 2008 amended FMLA to provide for up to 12 weeks of protected leave for qualified “exigencies” for a spouse, son, daughter or parent of a member of the Armed Forces on active duty or who is called to active duty in support of a contingency operation to assist service members’ families in managing their affairs while the covered service member is on active duty. Only family members of service members in the Reserves, National Guard and certain retired members of the Armed Forces are covered by this provision.

### Definitions

1. “Contingency Operation” is a military operation designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations or hostilities against an enemy of the United States or against an opposing military force.
2. “Active Duty or Call to Active Duty Status” means duty under a call to order to active duty or notification of an impending call or order to active duty in support of a contingency operation. Included are retired members of the regular Armed Forces and members of the retired Reserve, members of the Reserves, National Guard and state militias called to active federal duty (29 C.F.R. §825.800).
3. “Son or Daughter on Active Duty or Called to Active Duty” means the employee’s biological, adopted or foster child, stepchild, legal ward or a child to whom the employee stood in loco parentis, who is on active duty or call to active duty status and who is of any age (29 C.F.R. §1229g). The son or daughter of a covered service member means the service member’s biological, adopted or foster child, stepchild, legal ward or a child to whom the employee stood in loco parentis, who is on active duty or call to active duty status and who is of any age (29 C.F.R. §825.122(i)).
4. “Parent of a Covered Service Member” means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the service member. It does not include parents-in-law (29 C.F.R. §825.122(i)).

### Qualifying Exigencies

1. Short-term Deployment – Employees are entitled to seven calendar days of leave, beginning on the day the military member is notified of an impending call or order to active duty. The seven days of leave may be taken to address any issue that arises because a covered military member is notified of a call or order to active duty seven or fewer days prior to the date of deployment.
2. Military Events and Related Activities – To attend any official military ceremony, program or event related to the call to active duty and to attend support or assistance programs

and informational briefings sponsored by the military, one of its service organizations or the American Red Cross.

3. Childcare and School Activities – To arrange for alternative childcare for a biological, adopted or foster child, a stepchild or a legal ward of a covered military member or a child for whom a covered military member stands in loco parentis who is either under age 18 or age 18 or older and incapable of self-care; to provide childcare on an urgent, immediate-need basis; to enroll in or transfer a child to a new school or day care facility; or to attend meetings with school or daycare facility staff when due to circumstances arising from the active military duty.

4. Financial and Legal Arrangements- To make or update financial or legal arrangements to address the service member's absence, such as powers of attorney; bank account signature authority; enrolling in the Defense Enrollment Eligibility Reporting System; obtaining military identification cards; or preparing or updating a will or living trust; or to act as the service member's representative before a federal, state or local agency to obtain, arrange or appeal military service benefits while the service member is on active duty and for a period of 90 days following the termination of active duty status.

5. Counseling – To attend counseling (provided by someone other than a health care provider) for the employee, the covered service member or his or her child, if the need for counseling is due to the active duty.

6. Rest and Recuperation – To spend time with a covered service member who is on short-term, temporary rest and recuperation leave during the period of deployment.

7. Post-deployment Activities – To attend arrival ceremonies, reintegration briefings and events and any other official ceremony or program sponsored by the military for 90 days following the termination of the active duty; and to address issues that arise from the death of a covered service member while on active duty, such as meeting and recovering the body and making funeral arrangements.

8. Additional Activities – To address other events that arise out of the active duty or call to active duty if the employer and employee agree that the leave qualifies as an exigency and agree to the timing and duration of the leave.

#### Documentation Requirements

The employee may be required to provide a copy of the service member's active duty orders or other documentation issued by the military. The employee may be required to sign a certification that provides a description of the facts regarding the exigency that are sufficient to support the need for leave. The county may require information regarding whether the leave is on an intermittent or reduced schedule basis, an estimate of the frequency and duration of the exigency; and if the leave involves meeting with a third party, the county has the right to contact the third party with or without the employee's permission to verify the meeting and its purpose (29 C.F.R. §825.309(b)). The county may also contact the appropriate unit of the Department of Defense without the employee's permission to verify that the covered service member is on active duty or was called or ordered to active duty status. Documentation of the family relationship for this leave may be required.

#### Military Caregiver Leave

Military caregiver leave provides up to 26 weeks of protected leave in a single 12 month period by an eligible spouse, parent, son, daughter or next of kin of a covered service member to care for a current member of the Armed Forces – including a member of the National Guard or Reserves who is on the temporary disability retired list – who has a serious injury or illness incurred in the line of duty while on active duty.

#### Definitions

1. “Next of Kin” of a covered service member means the nearest blood relative (other than the already listed spouse, parent, son or daughter) in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions; brothers and sisters; grandparents; aunts and uncles; and first cousins; unless the service member has specifically designated in writing another blood relative as his or her nearest blood relative. If there are multiple family members with the same level of relationship to the service member, all of them are considered next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously (29 C.F.R. §825.122(d)).
2. “Outpatient Status” means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (29 C.F.R. §825.000).
3. “Serious Injury or Illness” of a covered service member is one that occurs in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating (29 C.F.R. §§825.127 (a) (1) and 825.000).

#### Conditions and Eligibility

The service member must be undergoing medical treatment, recuperating or therapy or otherwise on outpatient status of the temporary disability retired list, and the illness or injury must be severe enough that it may render the service member medically unfit to perform the duties of his or her military office, grade, rank or rating.

Former members of the Armed Forces, Reserves, or National Guard are not covered by this provision, but all members of the regular Armed Forces as well as the Guard and Reserves, are.

The 26 weeks of leave are per service member and per injury or illness. A covered employee who has more than one covered family member in the Armed Forces may take 26 weeks of leave in a subsequent 12 month period to care for a second service member and may do the same if a covered service member is injured or becomes ill a second time.

Caregiver leave must be taken in a single 12 month period, which begins on the first day the employee takes leave to care for a covered service member and ends 12 calendar months later. If the employee does not take all 26 weeks of leave during a 12 month period, the remaining weeks of leave are forfeited.

Employees are entitled to a combined total of 26 weeks of leave for any FMLA qualifying reason during a single 12 month period, but to only 12 weeks for anything other than to care for a seriously ill or injured service member.

If the leave qualifies as both military caregiver leave and traditional FMLA leave, for example to care for a spouse with a serious health condition that resulted from an injury while on active military duty, the leave must first be designated as military caregiver leave and the leave cannot be counted simultaneously against both types of leave. The county may retroactively designate the leave as military caregiver leave.

In the case of a husband and wife who are both employed by the county, they are limited to a combined total of 26 workweeks of leave.

#### Certification

The county may require certification that the employee is needed to care for a seriously ill or injured service member. Certification may be completed by a Department of Defense health care provider, a Veterans Affairs health care provider, or a Department of Defense TRICARE authorized health care provider (29 C.F.R. §825.310). The county may seek authentication and or clarification of the certification, but second and third opinions are not permitted. The employer may also require the employee to provide confirmation of the family relationship to the service member. In lieu of the medical certification, the county must accept invitational certification travel orders (ITO) or invitational travel authorizations (ITA) issued to a family member to join an injured or ill serviced member at his or her bedside. An ITO or ITA is sufficient certification of the need for leave if the employee is not named in the order or authorization (29 C.F.R. §825.310(e)).