

POLICY 411 LEAVES – FAMILY, MEDICAL & MILITARY

1. Purpose. Child rearing, family illness, employee medical leave, and military call-to-duty and military caregiver leave are available to employees as specified below. The intent of this Policy is to comply with both the Wisconsin and federal Family and Medical Leave Acts. Should this policy conflict in any way with the applicable federal and state statutes or regulations, the statutes, or regulations shall control.

2. Eligibility.

2.1 Federal - To be eligible for the federal leave discussed below, the employee must have worked for the County for twelve (12) months and worked at least one thousand two hundred fifty (1,250) hours in the last twelve (12) month period. The employee must also work at a worksite where 50 or more employees are employed within 75 miles of that worksite.

2.2 Wisconsin - Employees who have been employed by the County for twelve (12) months and who have worked one thousand (1,000) hours during the preceding fifty two (52) weeks are eligible for the leaves provided under Wisconsin law. For leave available under state law, paid time off counts as hours worked.

2.3 This policy assumes that an employee is eligible for both federal and state leaves. This may not always be the case. Employees are to submit written requests for leave in all cases so that the County may make an eligibility determination.

3. Length of Leave.

3.1 The federal Family and Medical Leave Law provides a combined total of twelve (12) weeks of basic family and medical leave for various purposes described below in a "twelve (12) month period," and an additional fourteen (14) weeks of military caregiver leave. For purposes of the federal law, the "twelve (12) month period" for determining the basic twelve (12) weeks of leave entitlement is a rolling twelve (12) month period measured backward from the date an employee uses any family/medical leave.

3.2 Wisconsin law provides six (6) weeks of child-rearing leave, two (2) weeks of family illness leave, and two (2) weeks of employee medical leave in a calendar year.

3.3 Wisconsin, federal, and County leaves provided for the same purposes run concurrently; that is, they do not "stack." If the leave is a County provided leave, plus federal and state FMLA leave as well, the leaves run concurrently. For example, an absence for a work or non-work related illness or injury that qualifies

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as employee paid time off or extended leave bank is also deducted from an employee's FMLA leave entitlements under the state and federal laws if the medical condition qualifies as a "serious health condition" under those laws.

4. Notice of Eligibility for and Designation of FMLA Leave.

4.1 Employees requesting FMLA leave are entitled to receive written notice from the County telling them whether they are eligible for FMLA leave and, if not eligible, the reasons why they are not eligible. When eligible for FMLA leave, employees are entitled to receive written notice of: (1) their rights and responsibilities in connection with such leave; (2) the County's designation of leave as FMLA qualifying or non-qualifying, and if not FMLA qualifying, the reasons why; and (3) the amount of leave, if known, that will be counted against the employee's leave entitlement.

4.2 The County may retroactively designate leave as FMLA leave with appropriate written notice to employees provided the County's failure to designate leave as FMLA qualifying at an earlier date did not cause harm or injury to the employee. In all cases where leaves qualify for FMLA protection, the County and employee can mutually agree that leave be retroactively designated as FMLA leave.

5. Employee FMLA Leave Obligations.

5.1 Notice of the Need for Leave. Employees who take FMLA leave must timely notify the County of their need for FMLA leave. Employees should request FMLA leave in writing whenever possible. The following describes the content and timing of such employee notices.

5.1.1 Content of Employee Notice. To trigger FMLA leave protections, employees must inform the County of the need for FMLA qualifying leave and the anticipated timing and duration of the leave, if known. Employees may do this by either requesting FMLA leave specifically, or explaining the reasons for leave so as to allow the County to determine that the leave is FMLA qualifying. For example, employees might explain that:

5.1.1.1 A specific medical condition renders them unable to perform the functions of their job;

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5.1.1.2 They or a covered family member are under the continuing care of a health care provider for a specific medical condition;

5.1.1.3 A specific medical condition renders the family member unable to perform daily activities or that the family member is a covered servicemember with a serious injury or illness incurred in the line of duty;

5.1.1.4 They are pregnant or have been hospitalized overnight; or

5.1.1.5 The leave is due to a qualifying exigency caused by a covered military member being on active duty or called to active duty.

5.1.1.5.1 Calling in "sick," without providing the reasons for the needed leave, will NOT be considered sufficient notice for FMLA leave.

5.1.1.5.2 Employees must respond to the County's questions to determine if absences are potentially FMLA qualifying. If an employee fails to explain the reasons for FMLA leave, the leave may be denied. When an employee seeks leave due to FMLA-qualifying reasons for which the County has previously provided FMLA-protected leave, he or she must specifically reference the qualifying reason for the leave or the need for FMLA leave.

5.1.2 Timing of Employee Notice. Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days' notice is not possible, or the approximate timing of the need for leave is not foreseeable, employees must provide the County with notice of the need for leave as soon as practicable under the facts and circumstances of the particular case. Employees who fail to give 30 days' notice for foreseeable leave, without a reasonable excuse for the delay, or otherwise fail to satisfy FMLA notice obligations, may have FMLA leave delayed or denied.

6. Basic FMLA Leave Entitlements.

6.1 Childbirth/Adoption Leave.

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6.1.1 **Purpose.** Unpaid child rearing leave may normally be used within sixteen (16) weeks prior to, or within twelve (12) months following.

6.1.1.1 The birth of the employee's natural child; or

6.1.1.2 The placement of a child with the employee for adoption or as a precondition to adoption under section 48.90(2) of the Wisconsin Statutes, but not both; or

6.1.1.3 The placement of a child with the employee for twenty-four (24) hour foster care that is made by or with agreement of a government agency.

6.1.2 Length of Child Rearing Leave. No employee may take more than twelve (12) weeks of federal child rearing leave in a twelve (12) month period. In addition, no more than twelve (12) weeks leave can be taken for the birth of any one child. If both the mother and father of a child are employed by the County, and they both desire child rearing leave, they are generally only entitled to a combined total leave of twelve (12) weeks. Child-rearing leave provided under federal law runs concurrently with the six (6) weeks of child-rearing leave provided under Wisconsin law.

6.1.3 Intermittent/Partial Leave Absences. For the first six (6) weeks of leave within sixteen (16) weeks prior to or after the child-rearing event (e.g., birth of child), an employee may take child rearing leave as an intermittent or as a partial absence from employment in increments of less than their full normal work day. An employee who does so shall schedule the intermittent or partial absence so it does not unduly disrupt the County's operations. To comply with this requirement, an employee is to provide the County, in writing, with the employee's proposed schedule of intermittent or partial absences no less than one (1) week before the schedule of absences is to commence. The schedule must be of a sufficient definiteness that the County is able to schedule replacement employees, if necessary, to cover the absences. Partial or intermittent leave must commence within sixteen (16) weeks before or after the birth, adoption, or foster placement of a child. Leave cannot be taken intermittently or as a partial absence before or beyond sixteen (16) weeks of the event, unless previously approved in advance. Rather, any remaining child-rearing leave must be taken in a single block.

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6.1.4 Scheduling Child Rearing Leave. An employee is expected to submit a written request for child rearing leave no less than thirty (30) calendar days before the leave is to commence and must schedule the leave after reasonably considering the County's needs. If the date of the birth, adoption, or foster care placement requires leave to begin sooner, the employee shall provide notice as soon as practicable.

6.2 Family Illness Leave.

6.2.1 **Purpose.** Unpaid family illness leave may be used to care for the employee's spouse, child, parents, or spouse's parent (i.e., parent-in-law), or domestic partner as defined by law or a domestic partner's parent as defined by law, who have a serious health condition.

6.2.2 Length of Family Illness Leave. No employee may take more than twelve (12) weeks of federal family illness leave for the employee's spouse, child, or parents in a twelve (12) month period. The federal leave generally runs concurrently with the two (2) weeks of family illness leave provided under state law in a calendar year. A maximum of two (2) weeks of family illness leave may be taken for a spouse's parent (i.e., a parent-in-law), a domestic partner, or a domestic partner's parent, in a calendar year, in addition to the twelve (12) weeks of federal FMLA leave.

6.3 Employee Medical Leave.

6.3.1 **Purpose.** Unpaid medical leave may be used by an employee who has a serious health condition which renders the employee unable to perform his or her job duties.

6.3.2 Length of Medical Leave. No employee may take more than twelve (12) weeks of federal employee medical leave in a twelve (12) month period. This leave generally runs concurrently with the two (2) weeks of employee medical leave provided under state law in a calendar year.

6.4 Military Call to Duty Leave.

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- 6.4.1 **Purpose.** Federal unpaid call-to-duty leave may be used as a result of a qualifying exigency arising from an employee's spouse, son, daughter or parent being on covered active duty or having been notified of an impending call or order to covered active duty status in the Regular Armed Forces, National Guard or Reserves in support of a contingency operation. Covered active duty requires deployment to a foreign country.
- 6.4.2 Qualifying exigencies may include attending certain military events, arranging for alternative child-care, addressing certain financial and legal arrangements, attending certain counseling sessions, rest and recuperation, attending post-deployment reintegration briefings ,and parental care to care for a military member's parent who is incapable of self-care when care is necessitated by covered active duty.
- 6.4.3 Length of Leave. An eligible employee is entitled to twelve (12) weeks of call-to-duty leave in a twelve (12) month period. The twelve (12) weeks in part of the twelve (12) weeks provided under federal law for other purposes as described above. Employee's requesting leave for Rest and Recuperation qualifying exigency leave may take up to fifteen (15) calendar days.

7. Injured/Ill Servicemember Caregiver Leave.

- 7.1 **Purpose.** In addition to the basic FMLA leave entitlements discussed above, an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered servicemember or recent veteran is entitled to take up 26 weeks of military caregiver leave during a single 12-month period to care for the servicemember or recent veteran with a serious injury or illness incurred in the line of duty.

- 7.1.1 A "covered servicemember" means a 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 on the temporary retired list for a serious injury or illness, and including covered veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness. A serious injury or illness includes injuries or illnesses that existed before the beginning of the member's active duty and were aggravated by service in the line of duty on active duty in the Armed Forces. Additionally, a member of the Armed Forces would have a serious injury or illness if he/she has incurred an injury or illness in the line of duty while on active duty in the Armed Forces provided that

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the injury or illness renders the servicemember medically unfit to perform duties of the member's office, grade, rank or rating.

A "covered veteran" means a member of the Armed Forces who has been discharged within the five (5) year period before the eligible employee first takes FMLA military caregiver leave. A covered veteran of the Armed Forces would have a serious injury or illness if he/she incurred or aggravated the injury or illness in the line of duty on active duty in the Armed Forces and the injury or illness manifested itself before or after the member became a veteran and is:

1. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; OR
2. A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; OR
3. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; OR
4. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers

7.1.2 "Next of kin" of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions; brothers and sisters; grandparents; aunts and uncles; and first cousins; unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has

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been made, the designated individual shall be deemed to be the covered servicemember's only next of kin.

7.2 Length of Leave. Leave to care for a servicemember shall only be available during a single 12-month period and, when combined with other FMLA-qualifying leave, may not exceed 26 weeks during the single 12-month period. For purposes of military caregiver leave, the single 12-month period begins on the first day an eligible employee takes leave to care for the injured servicemember. A separate caregiver leave can be taken for each covered servicemember and/or for each new injury/illness.

8. Scheduling Family Illness/Employee Medical/and Military Caregiver Leave.

8.1 Medical Necessity. An employee may schedule family illness, employee medical, or military caregiver leave as medically necessary. An employee must consider the needs of the County when scheduling leave. When medically necessary, an employee may take the leave as an intermittent or as a partial absence from employment in increments of less than their full normal work day. The lowest increment may be the lowest increment that the County permits for any other type of leave, paid or unpaid. An employee who does so shall schedule the intermittent or partial absence so it does not unduly disrupt the County's operations. To comply with this requirement, an employee is to provide the County, in writing, with the employee's proposed schedule of partial absences as soon as possible after the employee learns of the probable necessity of such leave.

8.2 Planned Treatment. When planning medical treatment, employees must consult with the County and make a reasonable effort to schedule treatment so as not to unduly disrupt the County's operations, subject to the approval of the health care provider. Employees should consult with the County prior to the scheduling of treatment to work out a treatment schedule that best suits the needs of both the County and the employee, subject to the approval of the health care provider. If an employee providing notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to fulfill this obligation, the County may require the employee to attempt to make such arrangements, subject to the approval of the health care provider.

8.3 Intermittent/Reduced Schedule Leave. When employees seek intermittent leave or a reduced leave schedule for reasons unrelated to the planning of medical treatment, employees must, upon request, advise the County of the reason why such leave is medically necessary. In such instances, the County and employee shall attempt to work out a leave schedule that meets the

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employee's needs without unduly disrupting the County's operations, subject to the approval of the health care provider.

9. Serious Health Condition/Medical Certification Supporting Need for Leave.

9.1 Submission of Certifications. Depending on the nature of FMLA leave sought, employees may be required to submit medical certifications establishing that a "serious health condition" (described below) is involved and supporting their need for FMLA leave. As described below, there generally are three types of FMLA medical certifications: an initial certification, a recertification, and a return to work/fitness for duty certification.

9.1.1 It is the employee's responsibility to provide the County with timely, complete and sufficient medical certifications. Whenever the County requests an employee to provide a FMLA medical certification, the employee must provide the requested certification within 15 calendar days after the County's request, unless it is not practicable to do so despite the employee's diligent, good faith, efforts. The County shall inform the employee if a submitted medical certification is incomplete or insufficient and provide the employee with at least seven calendar days to cure deficiencies. The County may deny FMLA leave to an employee who fails to timely cure deficiencies or otherwise fails to timely submit requested medical certifications.

9.1.2 With the employee's permission, the County (through individuals other than an employee's direct supervisor) may contact the employee's health care provider to authenticate or clarify medical certifications. If an employee chooses not to provide the County with authorization allowing it to clarify or authenticate a certification with a health care provider, the County may deny FMLA leave if the certification is unclear and a serious health condition cannot be verified.

9.1.3 Whenever the County deems it appropriate to do so, it may waive its right to receive timely, complete and/or sufficient FMLA medical certifications.

9.2 Types of Certifications.

9.2.1 Initial Medical Certifications. Employees requesting leave because of their own, or a covered relative's, serious health condition, or to care for a covered service member, must supply a medical certification supporting the need for such leave from their health care provider or, if applicable, the health care provider of their covered family or service

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member. If an employee provides at least 30 days' notice of medical leave, he or she should submit the medical certification before leave begins. A new initial medical certification will be required on an annual basis for serious medical conditions lasting beyond a single leave year.

9.2.1.1 A "serious health condition" is considered to be a disabling physical or mental illness, injury, impairment, or condition involving any of the following.

9.2.1.1.1 Inpatient care in a hospital, nursing home, hospice, or residential medical facility; or

9.2.1.1.2 Outpatient care that requires continuing treatment or supervision by a health care provider.

9.2.1.1.3 The federal FMLA leave includes a more detailed and expansive definition of a "serious health condition" described in the medical certification form, which is provided to an employee if the employee is required to submit a medical certification form from his/her physician, certifying that a "serious health condition" within the meaning of law is involved.

9.2.1.1.4 If the County has reason to doubt an initial medical certification, it may require an employee to obtain a second opinion at the County's expense. If the opinions of the initial and second health care providers differ, the County may, at its expense, require an employee to obtain a third, final and binding, certification from a health care provider designated or approved jointly by the County and the employee.

9.2.2 Medical Recertification. Depending on the circumstances and duration of FMLA leave, the County may require an employee to provide a recertification of a medical condition giving rise to the need for leave. The County will notify the employee if recertification is required and will give the employee at least 15 calendar days to provide medical recertification.

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9.2.3 Return to Work/Fitness for Duty Medical Certifications. An employee returning to work from FMLA leave that was taken because of the employee's own serious health condition that made the employee unable to perform his/her job duties must provide the County with a medical certification confirming the employee is able to return to work and the employee's ability to perform the essential functions of the employee's position. The County may delay and/or deny job restoration until an employee provides a requested return to work/fitness-for-duty certification.

9.3 Certifications Supporting Need for Military Family Leave.

9.3.1 Upon request, the first time an employee seeks leave due to a qualifying exigency arising out of the active duty or call to active duty status of a covered military member, the County may require the employee to provide. (1) a copy of the covered military member's active duty orders or other documentation issued by the military indicating the covered military member is on active duty or called to active duty status and the dates of the covered military member's active duty service; and (2) a certification from the employee setting forth information concerning the nature of the qualifying exigency for which leave is requested. An employee shall provide a copy of new active duty orders or other documentation issued by the military for qualifying exigency leaves arising out of a different active duty or call to active duty status of the same or a different covered military member.

9.3.2 When leave is taken to care for a covered service member with a serious injury or illness, the County may require the employee to obtain certifications completed by an authorized health care provider of the covered service member. In addition, the County may request that the certification submitted by the employee set forth additional information provided by the employee and/or the covered service member confirming entitlement to such leave.

10. Using Paid Leave While on Unpaid FMLA Leave.

10.1 Wisconsin FMLA. While on Wisconsin FMLA leave (including when running currently with federal FMLA leave), an employee may elect to use any accrued County provided paid time while taking unpaid FMLA leave.

10.2 Federal FMLA. When solely utilizing federal FMLA leave, an employee may elect, or the County may require, an employee to utilize certain accrued County provided paid leave while on FMLA leave. For example, an employee

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may elect, or the County may require, the use of accrued paid time off while on any type of FMLA leave. The employee may elect, or the County may require, the use of accrued leave while the employee is on FMLA employee medical leave. However, an employee's use of County provided paid time off must comply with the terms and conditions of the County's paid time off policy.

10.3 The substitution of paid time for unpaid FMLA leave time does not extend the length of FMLA leave - the paid time runs concurrently with an employee's FMLA entitlement.

10.4 Leaves of absence taken in connection with a paid or unpaid disability leave plan or worker's compensation injury/illness run concurrently with any FMLA leave entitlement. Upon written request, the County may allow employees to use accrued paid time to supplement any paid disability or workers' compensation benefits.

11. Insurance and Benefits.

11.1 Payment of Premiums. While an employee is on FMLA leave, the County will maintain group health insurance coverage under the conditions that applied before the leave began. If prior to the leave, the employee was required to participate in the premium payments, the employee is required to continue with payment of his/her share of the premiums while on leave. An employee's failure to make the required payments may result in termination of the employee's insurance coverage.

11.1.1 Unless the County notifies employees of other arrangements, whenever employees are receiving pay from the County during FMLA leave, the County will deduct the employee portion of the group health plan premium from the employee's paycheck in the same manner as if the employee was actively working. If FMLA leave is unpaid, employees must pay their portion of the group health premium through a method determined by the County.

11.2 Termination of Benefits. The County's obligation to maintain health benefits will stop if and when: (1) an employee informs the County of intent not to return to work at the end of the leave period; (2) the employee fails to return to work when the leave entitlement is used up; or (3) the employee fails to make any required payments while on leave after appropriate waiting periods and time periods as specified by law. The County's obligation to maintain health care coverage ceases if an employee's premium payment is more than 30 days late. If an employee's payment is more than 15 days late, the County will send a letter notifying the

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employee that coverage will be dropped on a specified date unless the co-payment is received before that date.

11.3 Recovery of Premium Payments. If the County chooses to do so, it may pay an employee's required premium payments while the employee is on leave. If the County does so and an employee does not immediately repay the County upon the employee's return to work, the County will deduct the amount of the payments from the employee's paycheck.

11.3.1 Also, the County has the right to collect from an employee the health insurance premiums the County paid during a period of unpaid leave if the employee does not return to work after the leave entitlement has been exhausted or expired. Such premium amounts may be deducted from any compensation owed to the employee upon termination of employment. An employee must return to work for at least thirty (30) calendar days in order to be considered to have "returned" to work. However, an employee's liability to repay health insurance premiums does not apply if his/her failure to return to work is due to a serious health condition or specific circumstances beyond the control of the employee.

12. Return from Leave.

12.1 An employee returning from family and/or medical leave can return to his or her old position, if vacant, at the time the employee returns to work. If the position is no longer vacant, the employee may be offered an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

12.2 The determination as to how an employee is to be restored to "an equivalent position" upon return from FMLA leave is made on the basis of established policies and practices, and provisions of the federal FMLA.

13. Outside Employment.

13.1 An employee who is solely utilizing federal FMLA leave (i.e., Wisconsin FMLA leave has been exhausted) and/or a County provided and approved leave, is prohibited from working for another employer while on federal FMLA leave.

Employees should contact Human Resources at 715-839-4710 if they have any questions regarding this policy.

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14. Coordination with Workers' Compensation.

14.1 Federal and Wisconsin FMLA leave will run concurrently with workers' compensation provided that the condition giving rise to qualifying workers' compensation leave is also a qualifying reason giving rise to leave under federal and/or Wisconsin FMLA leave.

