KITSAP COUNTY FAMILY AND MEDICAL LEAVE (FMLA) POLICY

A. An employee who has been employed with the County for fifty-two weeks and has worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the FMLA leave, is entitled to twelve workweeks of FMLA leave during the twelve-month period following the date the employee’s first FMLA leave begins for the following reasons:

1. For the birth of a son or daughter, and to care for a newborn child;
2. For the placement with the employee of a son or daughter for adoption or foster care;
3. To care for the employee's spouse, son, daughter, or parent with a serious health condition; and
4. Because of a serious health condition that makes the employee unable to perform the essential functions of the employee’s job.

B. As part of the FMLA leave, the employee must exhaust all paid leave including compensatory time, floating personal holiday, accrued vacation and sick leave prior to entering into a leave without pay status. Nothing in this policy requires the County to give the employee more than 12 total workweeks of FMLA leave, including both paid and unpaid leave during the twelve-month period following the date the employee’s first FMLA leave begins.

NOTE: Nothing in this policy will preclude an employee from using sick leave or other paid time off as outlined in RCW 49.12.270, effective January 1, 2003.

C. The FMLA leave to which an employee is entitled under this policy is in addition to any leave for sickness or temporary disability because of pregnancy or childbirth as required by WAC162-30-020 and chapter 49.60 RCW.

D. An employee must provide the County at least 30 days advance written notice before the FMLA leave is to begin if the need for the leave is foreseeable, such as an expected birth, placement for adoption or foster care, or planned medical treatment for a serious medical condition of the employee or of a qualifying family member. If 30 days is not practicable, notice must be given as soon as practicable. Failure to give proper notice may mean that the FMLA leave may be denied until at least 30 days after the date that notice is provided.
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E. A husband and wife who are both employed by the County and are eligible for FMLA leave, are limited to a combined total of 12 weeks of leave during the 12-month period following the date the first FMLA leave begins under the following circumstances:

1. Birth of the employee’s child or to care for the child after birth;
2. Placement of a child with the employee for adoption or foster care, or to care for the child after placement; -or-
3. Care of a parent with a serious health condition.

(Note: under the aforementioned circumstances, the County may limit the time off work to one spouse at a time, so both would not be off work at the same time).

F. While on FMLA leave, the employee is entitled to the same medical, dental and vision benefits that the employee would have had if the employee had not been on leave.

1. The employee is responsible for paying any share of the premiums he or she would have been responsible for paying had FMLA leave not been taken.
2. If the employee does not return to work following FMLA leave, the employee shall reimburse the County for the County’s cost in maintaining medical benefits unless the reason for not returning to work is beyond the employee’s control.

G. Upon returning to work from FMLA leave, an employee:

1. Is entitled to the same position held by the employee when the FMLA leave commenced or an equivalent position.
2. Has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.
3. Who fails to return to work on the established ending date of the FMLA leave without a legitimate excuse may be precluded from returning to full-time employment with the County.

H. Any words, terms, or phrases not defined in this policy and any dispute over the interpretation of this policy shall be resolved consistent with the regulations set forth in 29 CFR §825, et seq.
I. Leave for birth, adoption or foster care must be completed within 12 months of the birth, adoption or placement into foster care.

J. Whenever an employee requests leave to care for a seriously ill spouse, son, daughter, or parent; or because the employee’s own serious health condition makes the employee unable to perform the functions of the employee’s position, then, within 15 days of the request for FMLA leave, the request must be supported by:

1. A written request on a designated County form by the employee identifying the reasons for the leave and the expected duration of the leave. A schedule of anticipated time off work must be included if leave is to be taken intermittently or on a reduced leave schedule. An employee must make a reasonable effort to schedule planned medical treatments and/or appointments to avoid disruption of the County’s operations.

2. A written certification issued by the health care provider of the employee or the employee’s ill family member. If the employee is needed to care for a seriously ill family member, the certification must also state the care the employee will provide and an estimated time period during which this care will be provided.

3. A completed Re-certification form may be required as requested by the County.

K. An employee may take intermittent leave or may reduce the usual number of hours worked per day or workweek. Intermittent or reduced leave schedules are subject to the County’s approval unless medically necessary. Under these circumstances, at the option of the County, the employee may be required to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee’s regular position.

L. Whenever an employee takes FMLA leave because of a serious health condition which makes the employee unable to perform the essential functions of his/her job, then prior to returning to work the employee must submit a fitness for duty certification from the treating health care provider, which states that the employee is able to perform the essential functions of the job with or without accommodation and therefore can return to work.

M. In order to comply with the record keeping requirements of the Family and Medical Leave Act and the Americans with Disabilities Act the following procedures shall be followed:
1. An employee’s request for FMLA leave shall be in writing using the County’s standardized leave request form. If FMLA leave is approved, the leave form must specifically designate the leave as FMLA leave. A copy of the leave form must be put in the employee’s personnel file, however, no medical information shall be placed in the personnel file.

2. All certifications must be on the County’s standardized form. The certifications and any medical information shall be maintained in a separate file and never placed in the personnel file.

3. With respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the County and employee shall agree in writing on the employee’s normal schedule or average hours to be worked each week. A copy of the agreement shall be maintained in the employee’s personnel file in accordance with paragraph M.1.

N. If leave is taken for a qualified FMLA reason but the County was not aware of the reason, and the employee desires that the leave be counted as FMLA leave, then the employee must notify the County within two business days of returning to work. If an employee does not provide the County with notice of an FMLA-qualifying reason for the leave within the specified time frame, the leave may be denied or the employee may not subsequently assert FMLA protections for the absence.

O. Definitions:

1. “Parent” means a biological parent or an individual who stands or stood "in loco parentis" to an employee when the employee was a child (excludes “in-laws”).

2. “Son” or “daughter” means a biological, adopted, or foster child, a step-child, a legal ward, or a child of a person standing "in loco parentis" who is either under 18 or over 18 and is incapable of self-care due to a mental or physical disability.

3. “Spouse” means a husband or wife from a legal marriage in accordance with the laws of the State of Washington.

4. “Serious health condition” means an illness, injury, impairment or physical or mental condition that involves either:

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

(1) A serious health condition lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that \textbf{also} involves:

(i) treatment two or more times by or under the supervision of a health care provider; -or-
(ii) at least one treatment by a health care provider with a continuing regime of treatment.

(2) Pregnancy or prenatal care: A visit to the health care provider is not necessary for each absence; includes routine prenatal care.

(3) A chronic serious health condition, which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to a health care provider is not necessary for each absence;

(4) A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer’s, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment;

(5) Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatment for cancer).

5. “Health care provider” means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or others “capable of providing health care services” who are authorized to practice in the state and perform within the scope of their practice as defined under state law to include: podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, clinical social workers, Christian Science practitioners listed with the First Church of Christ, Scientist, in Boston, Massachusetts, and any health care provider from whom an employer or the employer’s group health plan’s benefits manager will accept
certification of the existence of a serious health condition to substantiate a claim for benefits.

THE FAMILY AND MEDICAL LEAVE ACT OF 1993

QUESTIONS AND ANSWERS

Q: Does the law guarantee paid time off?
A: No. FMLA leave is generally unpaid leave. However, in certain circumstances the use of accrued paid leave may be substituted for unpaid leave required by the law.

Q: How much unpaid leave is an employee entitled to?
A: An "eligible" employee of a covered employer is entitled to 12 weeks of leave for specific family and medical reasons during a 12-month period.

Q: Is an employee entitled to any paid leave while on FMLA leave?
A: The law permits an employee to substitute accrued paid leave under certain conditions, or the employer may require an employee to take paid leave before unpaid leave.

Q: What if an employer already provides paid leave for the purposes covered by FMLA?
A: FMLA is intended to encourage generous family and medical leave policies. For this reason, the law does not diminish more generous existing leave policies or laws, though employers are entitled to conform their employment policies and practices to the FMLA’s requirements.

Q: Who is considered a "family member" for purposes of taking FMLA leave?
A: A spouse, son or daughter, and parent are immediate family members for purposes of FMLA.

Q: Does FMLA leave have to be taken in whole days or whole weeks, or in one continuous block of time?
A: The FMLA permits leave for birth, or placement for adoption or foster care, to be taken intermittently--that is, in shorter blocks of time--or by reducing the normal weekly or daily work schedule subject to approval by the employer. Leave for a serious illness may be taken intermittently when "medically necessary."

Q: Is there a limit to the number of times FMLA leave can be taken in one year?
A: No. An employee is entitled to take up to 12 weeks of leave in a 12-month period for the specified family and medical reasons.
Q: Can an employer make inquiries about an employee's leave during the absence?

A: Yes, but only to the employee. The employer may have reason to confirm whether the leave needed or being taken satisfies FMLA purposes, and may require periodic reports on the employee’s status and intent to return to work after leave. Also, if the employer has reason to doubt the validity of a medical certification or wishes to obtain another opinion, an employee may be required to obtain additional medical certification at the employer's expense, or recertification during a period of unpaid FMLA leave.

Q: Can an employer refuse to grant FMLA leave to an employee?

A: An "eligible" employee who has complied with FMLA’s notice and certification requirements may not be denied FMLA leave.

Q: Are there circumstances in which an employer can deny an employee his/her job after using FMLA leave?

A: An employer may deny reinstatement to work to certain highly paid salaried ("key") employees under certain circumstances. In addition, employers are not required to reinstate employees who would have been laid off or otherwise had their employment terminated (e.g., who were hired for a specific term of employment) had they continued to work during the period leave was used. Also, employers who advise employees experiencing a serious health condition that they will require a medical certificate of fitness for duty to return to work can deny reinstatement to an employee who fails to provide such a certificate until it is provided.

Q: Must an employee be allowed to return to the same job after taking leave?

A: Generally, yes. The employer has the option of restoring an employee to an "equivalent position" rather than the position held by the employee prior to taking leave. An equivalent position must have equivalent pay, benefits, and terms and conditions of employment as the original job.

Q: What benefits must be maintained while an employee is on unpaid FMLA leave?

A: The employer is required to maintain health insurance coverage on the same terms it would be provided if the employee continued to work. In addition, the use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee’s leave. Certain other earned benefits, such as seniority, do not need to continue to accrue during a period of unpaid FMLA leave. And still other kinds of benefits, such as elective life insurance coverage, may require that arrangements be made between the employer and the employee so that they are continued during a period of FMLA leave. In any case, unless the employee elects otherwise, the employee must be restored to the same benefits upon return from FMLA leave as if the employee had continued to work during the period of the leave.
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Q: Are there any employees who are not covered by this law?

A: Yes. Generally, employees who work for an employer that employs less than 50 employees are not covered. To be eligible for FMLA benefits, an employee must: (1) work for a covered employer; (2) have worked for the employer for at least a total of 12 months; (3) have worked at least 1,250 hours during the prior 12 months; and, (4) work at a location where at least 50 employees are employed by the employer within 75 miles.

Q: What about spouses who work for the same employer?

A: If a husband and wife have the same employer, they may be limited to a combined total of 12 weeks of FMLA leave in a 12-month period for the birth of a child, placement of a child for adoption or foster care, or the care of a parent with a serious health condition.

Q: What must an employee do to request FMLA leave?

A: An employee may be required to provide the employer with 30-days advance notice when the need for leave is "foreseeable." When such an advance notice is not possible or the need for the leave cannot be foreseen, an employee must give notice as soon as "practicable."

Q: What kind of proof is required for an employee’s illness or the illness of an immediate family member of an employee?

A: An employee shall be required to submit documentation--called a medical certification--from the health care provider who is treating the employee or immediate family member.

Q: Can the employer require additional proof?

A: The employer may require an employee to obtain additional medical certification from a health care provider of the employer’s choice, and at the employer’s expense.

Q: Can an employer require an employee to return to work before leave has been exhausted?

A: Subject to certain limitations, the employer may deny the continuation of FMLA leave due to a serious health condition if the employee fails to fulfill obligations to provide supporting medical certification as required by the law.

Q: Are there any restrictions on how an employee can spend his/her time while on leave?

A: Generally no, provided the leave is taken for a legitimate family or medical reason and all appropriate notice and certification requirements are met. However,
employers with established policies regarding outside employment while on paid or unpaid leave may uniformly apply these policies to employees on FMLA leave.

Q: Are there any differences in how the law applies to private and public sector employees or employers?

A: The 50-employee coverage test does not apply to public sector employers. However, the public agency must employ 50 employees within a 75-mile area around the work site in order for an employee to be "eligible" and entitled to FMLA benefits.

Q: Where may an employer get additional information about the Family and Medical Leave Act?

A: An employer may contact the nearest office of the Wage and Hour Division, Employment Standards Administration, of the U.S. Department of Labor for information and guidance on FMLA. The phone number of the Seattle office is (206) 398-8039.