

## **KITSAP COUNTY FAMILY AND MEDICAL LEAVE (FMLA) POLICY**

### **ELIGIBILITY**

The federal Family and Medical Leave Act (FMLA) provides eligible employees up to twelve (12) work weeks of unpaid job protected leave per 12-month period. In order to be eligible for FMLA, the employee must have:

1. Been employed by the County for twelve months (not necessarily consecutively) **AND**
2. Have actually worked at least 1,250 hours during the twelve-month period immediately preceding the commencement of FMLA leave **AND**
3. Require leave for any one or more of the reasons listed below.

### **BASIC LEAVE ENTITLEMENTS**

1. The birth of a son or daughter, and to care for a newborn child;
2. The placement with the employee of a son or daughter for adoption or foster care (i.e. parental leave);
3. To care for the employee's spouse, son, daughter, or parent with a serious health condition; and
4. Because of the employee's own serious health condition that makes the employee unable to perform the essential functions of his/her job.

### **MILITARY FAMILY LEAVE ENTITLEMENTS**

#### Leave for Military Qualifying Exigencies

For a "qualifying exigency" arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member (including those in the Armed Forces, the National Guard, or the Reserves) who is on active duty in, or has been notified of an impending call to, deployment with the Armed Forces to a foreign country. Qualifying exigencies are generally activities related to the active duty or call to duty, including attending certain military events, arranging for alternative childcare, addressing certain financial and/or legal arrangements, attending counseling sessions and attending post-deployment reintegration briefings.

#### Military Caregiver Leave

An eligible employee may take up to 26 weeks of leave during a single twelve (12) month period to care for an injured service member who is the employee's spouse, parent, child or next-of-kin. The combined leave total for all purposes described in this policy may not exceed 26 weeks in the applicable leave year for employees who are eligible for both Military Caregiver leave and other qualifying FMLA leave.

### **PREGNANCY DISABILITY**

When an employee is disabled during pregnancy or following childbirth, she is entitled to unpaid pregnancy disability leave under Washington state law, regardless of FMLA eligibility. She may also be

eligible for additional leave under the Washington State Family Leave Act (WFLA). Eligible employees may also be entitled to leave to care for a registered domestic partner under the WFLA. Please see the section on interaction of pregnancy disability leave, WFLA, and FMLA later in this policy.

All FMLA leave will be administered in accordance with the federal statute and FMLA regulations. To the extent particular mandatory FMLA eligibility, certification, or other issue is not specifically addressed in this Policy, Kitsap County will follow the law and regulations.

## **DEFINITIONS**

- A. 12 Month Period: Kitsap County uses the rolling calendar year method. This means that the amount of FMLA leave an employee is entitled to is calculated by looking at the previous 12-month period measured backward from the date the first day of FMLA leave is taken. The only exception is for military caregiver leave, in which the 12-month period begins on the first day the employee takes military caregiver leave.
- B. Child: means a dependent child under 18 years of age, or 18 years of age or older who is incapable of self care because of a mental or physical disability. An employee's "child" is one for whom the employee has actual day-to-day responsibility, and includes biological, adopted, foster, or step-child.
- C. Continuing Treatment: means:
1. Two or more treatments by a health care practitioner on referral from or under the direction of a health care provider; or
  2. A single visit to a health care provider that results in a regimen of continuing treatment, such as treatment for cancer, diabetes, kidney disease, heart disease, stroke, severe respiratory illness, for example. *A regimen of taking over-the-counter medications, bed rest, drinking fluids, exercising, and other similar activities do not constitute a continuing care regimen; or:*
  3. In the case of a serious, long-term, or chronic condition or disability that cannot be cured, continuing care can include being under the ongoing supervision of, but not necessarily being actively treated by, a health care provider.
- D. Covered Service Member: For the purposes of Military Caregiver Leave, refers to a current member of the Armed Forces, including National Guard or Reserve Members, who has a serious injury or illness incurred or aggravated in the line of active duty that may render the service member medically unfit to perform his or her duties. The service member may be undergoing medical treatment, in recuperation or therapy, in outpatient status, or on a temporary disability retired list. Covered service members also include veterans who are undergoing medical treatment, recuperation or therapy for serious injuries or illnesses incurred or aggravated in the line of active duty.
- E. Health Care Provider: Licensed doctors of medicine or osteopathy, podiatrists, clinical psychologists, clinical social workers, optometrists, chiropractors (only when providing manual manipulation of the spine to treat a serious health condition), nurse midwives, nurse practitioners, health care providers who are listed on any of the County's group health plans, and registered Christian Science practitioners.

- F. Parent: a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child. This includes a stepparent who is a same-sex spouse of the employee's parent. This does not include parents-in-law.
- G. Next of Kin (see Leaves for Qualifying Military Exigencies or Military Caregiver): The next of kin of a covered servicemember is the nearest blood relative (other than the servicemember's spouse, parent, son or daughter) in the following order of priority: blood relatives who have been granted legal custody of the servicemember, siblings, grandparents, aunts and uncles, and first cousins, unless the servicemember has designated in writing a different blood relative for purposes of military caregiver leave.
- H. Serious Health Condition: An illness, injury, impairment, or physical or mental condition that:
1. Requires inpatient care;
  2. Any period of incapacity of *more than three calendar days* that involves continuing treatment by a health care provider;
  3. Continuing treatment by a health care provider for chronic or long-term health condition that is incurable or which, if left untreated, would likely result in a period of incapacity of more than three calendar days; or
  4. Prenatal care by a health-care provider, or any period of incapacity due to pregnancy.
- G. Spouses (both employed by Kitsap County): Following the birth or placement for adoption or foster care of a child or to care for a sick family member: married employees may take a combined leave limited to twelve work weeks. If either spouse uses FMLA leave for his or her own serious medical condition, each spouse remains eligible for the remainder of the twelve week FMLA leave entitlement, excluding time take to care for a family member or for the birth/placement of a child. (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).

## **LEAVE RIGHTS AND REQUIREMENTS**

- A. Prior to entering into FMLA Leave without pay status, the employee must exhaust all paid leave, including compensatory time, floating personal holiday, accrued annual and sick leave. In the case of FMLA for an employee's own condition, the employee may use accrued comp time first, but must exhaust sick leave before using annual leave. 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. *Exception:* employees on leave for work related injuries are not required to exhaust all paid leaves before going in to leave without pay status.
- B. 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 the need for leave is not foreseeable, notice must be given as

soon as practicable. Failure to give proper notice may mean that the FMLA leave may be denied or delayed.

- C. If leave is taken for a FMLA qualifying reason about which the County was unaware, and the employee desires that the leave be counted as FMLA leave, then the employee must notify the County within two business days after returning to work. If an employee does not provide the County with notice and certification of an FMLA-qualifying reason for the leave within fifteen (15) calendar days, the leave may be denied, or the employee may not subsequently assert FMLA protections for the absence.
- D. While on FMLA leave, the employee is entitled to the same health, dental and vision benefits that the employee would have had if the employee had not been on leave.
  - 1. For the duration of the FMLA Leave, the County will continue to pay the employer contributions for any health, dental, basic life, vision and disability insurance at the identical level that the employee received prior to going on FMLA. The employee is responsible for paying the employee share of the contributions. If the employee is using accrued balances and is in full paid status, the employee portion of contributions will be deducted from the employee's paycheck like usual. If the employee is in leave without pay status, the employee must remit payment for the employee share of contributions timely. County payroll will notify the employee of the amount and date(s) due.
  - 2. If the employee does not return to work within one calendar month following a continuous (not intermittent) 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.
- E. 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 qualifying reason may be precluded from returning to full-time employment with the County.
- F. Leave for birth, adoption or foster care must be completed within 12 months of the birth, adoption or placement into foster care.

**REQUESTING FMLA LEAVE**

- A. When an employee requests an FMLA leave or when the County becomes aware that an employee's absence may be for an FMLA qualifying reason, Kitsap County Human Resources will issue an FMLA Packet to the employee within five (5) business days, barring extenuating circumstances. The contents of the packet may be sent electronically, mailed, or handed to the employee.
- B. The FMLA Packet consists of:

1. FMLA Notice of Rights and Responsibilities
  2. Employee FMLA Request Form
  3. Medical Certification
  4. Job Description/Class Specification that includes the essential functions and requirements of the job
- C. The employee must provide a completed and signed FMLA Request Form as soon as possible in order for the FMLA leave request to be considered timely.
- D. The employee must provide the completed Medical Certification within fifteen (15) calendar days of receipt of the FMLA Packet unless it is not practicable under the particular circumstances to do so despite the employee's diligent good faith efforts. A reasonable extension of this deadline may be granted provided a request is made prior to the Medical Certification submission deadline and the employee notifies Human Resources of the status of the required documentation. The Medical Certification must be complete, responsive, and sufficient to determine the eligibility for leave, and the leave's duration and frequency. Insufficient medical certification may delay or deny FMLA leave until and unless the Medical Certification is remedied within fifteen (15) calendar days from the date the employee is notified of the insufficient certification.

#### **INTERMITTENT OR REDUCED WORK SCHEDULE LEAVE**

An employee may take leave intermittently in separate blocks of time, or on a reduced work/leave schedule to care for an immediate family member with a serious health condition or because of the employee's own serious health condition when "medically necessary".

Employees must request intermittent leave or temporary reduced work schedule leave on an FMLA Employee Leave Request form, and must provide Medical Certification that specifies anticipated duration frequency, and/or necessary schedule. Forms must be provided within the time frames specified above.

Reduced schedule leave and intermittent leave for personal medical leave is limited to times which are scheduled for treatment, recovery from treatment or illness, and for periods of disability due to a chronic health condition, including psychological care. An employee must have prior consent of his or her supervisor when intermittent or reduced leave is taken after the birth or placement of a child for adoption or foster care. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as to not unduly disrupt Kitsap County's operations.

#### **RECERTIFICATION**

- A. For conditions lasting beyond a single leave year, medical certification will be required in each subsequent leave year.
- B. The County will require recertification if the circumstances of the leave change significantly (the duration of leave, the frequency with which leave is needed, etc.).
- C. Medical recertification, like initial certifications, must be complete and sufficient.

- D. If the County identifies possible patterns of leave abuse, such as frequent absences before and after scheduled days off, the County may require recertification that asks the pattern of absences and requests the health care provider to answer whether the patterns of absence are consistent with the serious health condition and the need for FMLA leave.
- E. Employees must provide required medical recertification within fifteen (15) calendar days after notification, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good-faith effort. Employees must request extended deadlines in writing before the expiration of the original deadline. Failure to do so may result in denial of FMLA leave.
- F. Medical Certifications and re-certifications shall be obtained at the employee's expense.

**RETURNING TO WORK FROM FMLA LEAVE**

Employee may be required to submit a Return to Work certification from the treating health care provider that states that the employee is able to perform the essential functions of the job with or without accommodation and therefore can return to work. The Return to Work Form must be submitted to the County before the employee may return to their job.

**INTERACTION OF PREGNANCY DISABILITY LEAVE (PDL), WASHINGTON FAMILY LEAVE ACT (WFLA) AND THE FEDERAL FAMILY AND MEDICAL LEAVE ACT (FMLA)**

Pregnancy Disability Leave (PDL)

In addition to leave under FMLA, Washington state law provides additional leave rights in connection with pregnancy-related disability. Regardless of eligibility for FMLA leave, an employee is entitled to Pregnancy Disability Leave for the period of time temporarily disabled because of pregnancy or childbirth. A pregnant employee is eligible for pregnancy disability leave immediately upon employment with no waiting period. However, medical certification is required to confirm the need for leave.

If the employee is eligible for FMLA leave, the Pregnancy Disability leave will run concurrently with FMLA leave. Pregnancy Disability leave is unpaid and health benefits are not automatically continued (unless the employee is also eligible for FMLA leave); however, accrued leave may be used and the employee may continue insurance coverage at her expense.

Washington Family Leave Act (WFLA)

The WFLA largely mirrors the FMLA, with the same eligibility requirements and entitlement to twelve (12) weeks of leave for family and medical reasons.

The most significant difference is that the WFLA provides eligible employees additional leave benefits to care for a newborn. In most situations WFLA runs concurrently with FMLA. However, WFLA does not run concurrently with Pregnancy Disability Leave (PDL). This entitles an employee to up to twelve (12) weeks of leave to care for a newborn after the employee has recovered from pregnancy disability (during which time she used PDL, but not WFLA).

**Example 1:**

Pregnant Employee A has worked for the County for 11 months when she gives birth. Her physician certifies that she is disabled due to recovering from pregnancy for eight (8) weeks. She is not eligible for WFLA or FMLA because she has not worked for the County long enough. However, she is eligible for Pregnancy Disability Leave.

She will take eight (8) weeks off protected by PDL and will then return to work. If Employee A wishes to continue health benefits, she must pay the full premium because her leave does not qualify for FMLA.

### **Example 2:**

Pregnant Employee B has worked full time for the County for five (5) years. She is eligible for FMLA, PDL and WFLA. She works until the birth and takes six weeks leave for recovery from childbirth. In such a case, the employee's six weeks of pregnancy disability leave runs concurrently with the first six weeks of her FMLA leave; however, her WFLA does not begin to run until after her pregnancy disability leave ends. Once the employee's pregnancy disability leave ends, her remaining 6 weeks of FMLA leave runs concurrently with the first six weeks of WFLA. Once the employee's FMLA leave is exhausted, she has six remaining weeks of WFLA leave (which results in a combined total 18 weeks of leave).

### **FMLA RECORDS**

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:

- Requests for FMLA leave shall be in writing using the County forms. Copies of the Employee FMLA Request Form, Medical Certification, and other documents pertinent to the leave must be placed in the Employee's confidential medical file, which will be securely housed in Human Resources.