

# **MADISON COUNTY, VIRGINIA PERSONNEL POLICIES MANUAL**

## **FAMILY AND MEDICAL LEAVE**

<b>POLICY NO.</b>	8.16	<b>EFFECTIVE:</b>	01/02/2024
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### **A. Purpose and Types of Leave**

The County grants unpaid leave for periods of absence in accordance with the terms of this policy and in accordance with the Family Medical Leave Act of 1993 ("FMLA"). While on leave under this Policy, an employee may not engage in any other work or employment unless he or she has written approval from the County.

The purpose of this policy is solely to outline and summarize the conditions under which an employee may be granted job protected time off from work, without pay, for a limited period for the following reasons in accordance with the FMLA:

#### **1. Family Leave**

Leave needed for the care of the employee's child within one year following birth or placement for adoption or foster care or, when necessary, before the birth or placement of the child for adoption.

#### **2. Medical Leave**

- a. Family medical leave** - Leave needed to care for the employee's spouse, child or parent who has a serious health condition.
- b. Employee medical leave** - Leave needed for the employee's own serious health condition, which renders the employee unable to perform his or her job.

#### **3. Military Servicemember Family Leave**

- a. Caregiver Leave** - Leave needed to care for a covered servicemember who is undergoing medical treatment, recuperation or therapy resulting from an injury or illness incurred by the member in the line of duty when the employee is the spouse, son, daughter, parent, or next of kin of the covered servicemember.
- b. Leave for Any Qualifying Exigency** - Leave arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active

duty) in the Armed Forces. A non-exclusive list of reasons for such leave include the following: (A) short-notice deployment; (B) military events and related activities; (C) childcare and school activities; (D) financial and legal arrangements; (E) counseling; (F) rest and recuperation; (G) post-deployment activities; and (H) additional activities, provided that the County and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

## B. Definitions

All terms of this Policy shall be defined in a manner consistent with the FMLA and regulations thereunder. The following terms have the following meanings for FMLA leave purposes:

1. Child - A biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in the place of a parent, so long as the child is under the age of 18 or is incapable of self-care because of a mental or physical disability.
2. Covered Servicemember - The term “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 otherwise on the temporary disability retired list, for a serious injury or illness; or a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or reserves) at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.
3. FMLA - The Family and Medical Leave Act of 1993, as amended from time to time, and the regulations thereunder.
4. Serious health condition - An illness, injury, impairment or physical or mental condition that involves either:
  - a. Inpatient care, which is defined as an overnight stay in a hospital, hospice or residential medical facility, including any period of incapacity (e.g., the inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom), or any subsequent treatment in connection with such inpatient care; or
  - b. Continuing treatment by a healthcare provider, which includes any one or more of the following:
    - i. Incapacity and treatment - A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or

period of incapacity relating to the same condition, that also involves: (A) treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a healthcare provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g. physical therapist) under orders of, or on referral by, a health care provider; or (B) at least one treatment by a healthcare provider, which results in a continuing regimen of treatment under the supervision of the health care provider. The requirements set forth in this paragraph for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity. Also, whether additional treatment visits or a regimen of continuing treatment is necessary within the 30day period shall be determined by the health care provider.

- ii. Pregnancy or prenatal care - Any period of incapacity due to pregnancy, or for prenatal care. Absences under this paragraph qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive full calendar days.
- iii. Chronic conditions - Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which: (A) requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse under direct supervision of a health care provider; (B) continues over an extended period of time (including recurring episodes of a single underlying condition); and (C) may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.). Absences under this paragraph qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive full calendar days.
- iv. Permanent or long-term conditions. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g. Alzheimer's, a severe stroke, or the terminal stages of a disease). The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- v. Conditions requiring multiple treatments. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care

services under orders of, or on referral by, a health care provider, for: (A) restorative surgery after an accident or other injury; or (B) a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

- vi. Serious Injury or Illness - The term “serious injury or illness” (A) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves) means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and (B) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

#### C. Eligibility

For purposes of this policy, a covered employee is an employee who (1) has been employed by the County for at least 12 months, and (2), has completed at least 1,250 hours of service during the 12 month period immediately preceding the beginning of his or her leave.

The 12 months that an employee must have been employed by the County need not be consecutive months, however, employment periods prior to a break in service of seven years or more will not be counted in determining whether the employee has been employed for at least 12 months unless such break in service was (1) the result of fulfillment of his or her National Guard or Reserve military service obligation or (2) pursuant to a written agreement with the County.

#### D. Duration and Limitations

1. Except in cases of leave to care for a covered service member with a serious injury or illness, the aggregate FMLA leave available to any employee for any 12-month period is 12 weeks. This includes the FMLA leave available for any qualifying exigency. The applicable 12-month period is a rolling one measured

backward from the date the employee uses any FMLA leave. The FMLA leave provided for in this Section III(A) is subject to the following limitations:

- a. If a husband and wife are both employees with the County, their leave is limited to an aggregate of 12 weeks together (rather than 12 weeks each) in any 12-month period if the leave is taken to care for one of the employee's parents or for the birth of the employees' child or to care for the child after the birth, or for placement of a child with the employees for adoption or foster care or to care for the child after placement.
- b. FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.
- c. Medical necessity. For intermittent leave or leave on a reduced leave schedule taken because of one's own serious health condition, to care for a parent, son, or daughter with a serious health condition, or to care for a covered service member with a serious injury or illness, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule.
- d. Birth or Placement. When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the County agrees.
- e. Any qualifying exigency leave. Leave due to any qualifying exigency may be taken on an intermittent or reduced leave schedule basis. If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable based on the reasons set forth in this Section, the County may require the employee to transfer temporarily, during the period that the intermittent or reduced leave schedule is required, 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. Such decision shall be at the County's discretion.
- f. If an employee has accumulated paid sick or vacation time, the County requires the employee to use all paid time first and take the remainder of the leave period as unpaid FMLA leave. Such paid time off shall be used concurrently with FMLA leave. Accrual of additional paid time off is suspended while on FMLA leave.

2. In cases of leave to care for a covered servicemember with a serious injury or illness, any eligible employee may take up to 26 weeks of leave during a single 12-month period. The "single 12-month period" referred to in this

paragraph shall commence on the date an eligible employee's first FMLA leave to care for the covered servicemember begins. Thus, the "single 12-month period" referenced herein may be separate from the 12-month period set forth in Section III(A).

3. The FMLA leave provided for in this subsection B is subject to the following limitations:
  - a. An eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during the "single 12-month period" referenced in Section III(B). This includes FMLA leave for an employee's own serious health condition or the serious health condition of a covered family member.
  - b. If a husband and wife are both employees of the County, and the need for leave to care for an injured servicemember arises, their leave is limited to an aggregate of 26 weeks together (rather than 26 weeks each) in any "single 12-month period" if the leave is taken to care for the same servicemember.

## E. Notifications and Certifications

1. Notice by employee of need for leave
  - a. Where the need for leave is foreseeable (including when it is possible to predict accurately when the leave will be needed) and it is practicable to do so, the employee must provide 30 days' prior notice to the County and must make reasonable efforts to schedule leave so as not to disrupt operations. If 30 days is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. For example, where an employee becomes aware of a need for FMLA leave less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or the next business day. If an employee fails to provide the required notice with no reasonable excuse, and the FMLA leave is foreseeable at least 30 days in advance, the taking of leave may be delayed until 30 days after the date the employee provides notice.
  - b. Where the need for leave is not foreseeable (including when it is impossible to predict accurately when the leave will be needed), the employee must provide as much notice to the County as is practicable. "As is practicable," for purposes of this paragraph only, means within the time prescribed by the County's usual and customary notice requirements applicable to such leave. If the employee fails to provide the required notice set forth in the above paragraph, the extent to which the County may delay FMLA coverage for leave may be determined by the length of

time between when the employee could reasonably have provided such notice and when the employee actually provided such notice. For example, if the employee could have provided notice on the day of an accident, but did not provide notice until one week later, the taking of leave may be delayed until one week after the employee provides notice.

- c. Manner of giving notice.
  - i. Verbal notice may be given initially, followed by notice in writing.
  - ii. Notice must be sufficient to make the County aware that the employee needs FMLA-qualifying leave and must include (1) the reason for the leave; (2) the expected timing and duration of the leave; (3) if intermittent or reduced schedule leave is requested in the case of medical leave, the reason why the intermittent or reduced scheduled leave is necessary and the schedule for treatment if applicable; (4) if applicable, a statement regarding the need of employee to care for a family member; and (5) other pertinent information. Under certain circumstances, an employee may also be asked to provide information sufficient to notify the County (1) that the employee is unable to perform the functions of the job; (2) that the employee is pregnant or has been hospitalized overnight; (3) whether the employee or the employee's family member is under the continuing care of a health care provider; (4) if the leave is due to a qualifying exigency, that a covered military member is on active duty or called to active duty status and that the requested leave is for a qualifying reason; (5) if the leave is for a family member, that the condition renders the family member unable to perform daily activities; or (6) that the family member is a covered servicemember with a serious injury or illness.
  - iii. Notice must be provided to the County Administrator unless otherwise specified.
2. Designation by the County of FMLA leave.
  - a. When an employee requests FMLA leave, or when the County becomes aware that an employee's leave may be for an FMLA-qualifying reason, the County will notify the employee of the employee's eligibility to take FMLA leave within 5 business days, absent extenuating circumstances.
  - b. Regardless of whether the employee provides notice of the need for FMLA leave, the County may designate leave as FMLA leave where the reason for leave is FMLA-qualifying. In such case, the County will provide notice of the designation to the employee within 5 business days once it has acquired enough information to determine whether the leave is being taken for a FMLA-qualifying reason, absent extenuating circumstances.

Also, if the County intends to require the employee to complete a fitness-for-duty examination prior to returning to work, the County will provide the employee with a list of the essential functions of his or her position with the designation notice.

- c. The County may designate leave as FMLA leave after it acquires the requisite knowledge to make a determination that the leave qualifies as FMLA leave and such designation may be retroactive to the beginning of the leave to the extent permitted by the FMLA.

3. Certification for medical leave.

- a. In the case of medical leave for the employee's own serious health condition, the serious health condition of an employee's family member, or leave to care for a covered servicemember suffering from a serious illness or injury, the employee must provide the County with a certification in the form of a Certification of Healthcare Provider from the healthcare provider treating the person or servicemember with the serious health condition. In addition, in case of leave for any qualifying exigency, the employee must provide a Certification of Qualifying Exigency for Military Family Leave. Copies of the following certification forms are available from the County Administrator (available online at <https://www.dol.gov/whd/fmla/forms.htm>):
  - i. Form WH-380E is for use when the employee's need for leave is due to the employee's own serious health condition.
  - ii. Form WH-380F is for use when the employee's need for leave is to care for a family member with a serious health condition.
  - iii. Form WH-384 is for use when the employee's need for leave is for a qualifying exigency.
  - iv. Form WH-385 is for use when the employee's need for leave is to care for a covered servicemember.
- b. The first time an employee requests leave because of a qualifying exigency, the County may require the employee to provide a copy of the covered military member's covered active duty orders or other documentation issued by the military which indicates that the covered military member is on covered active duty or call to covered active duty status, and the dates of the covered military member's service.
- c. When leave is taken to care for a covered servicemember (i.e. caregiver leave), the County may require the employee to obtain a certification completed by an authorized health care provider of the covered servicemember, including:

- i. a United States Department of Defense (“DOD”) health care provider
  - ii. a United States Department of Veterans Affairs health care provider;
  - iii. a DOD TRICARE network authorized private health care provider; or
  - iv. a DOD non-network TRICARE authorized private health care provider.
- d. When the need for leave is foreseeable, the County will request that the employee furnish certification at the time the employee gives notice of the need for FMLA leave or within 5 business days thereafter, or, in the case of unforeseen leave, within 5 business days after the leave commences. The employee must provide the certification no later than 15 calendar days after the County’s request, unless it is not practicable to do so despite the employee’s diligent efforts.
- e. In the event the certification is incomplete or insufficient, the employee shall be given 7 calendar days, unless not practicable, to cure any such deficiency. If the requested certification is not provided when requested, or if the employee fails to provide a complete and sufficient certification after being given 7 days to cure any deficiencies, the County may deny the taking of FMLA leave.
- f. If the County has reason to doubt the authenticity of the certification, or if the County requires clarification of information contained in the certification, the County may contact the health care provider for purposes of clarification and authentication after the County has given the employee the opportunity to cure any deficiencies.
- g. The County may require the employee to obtain a second opinion (at the County’s own expense) from a healthcare provider selected or approved by it (other than a person regularly employed by the County, unless access to healthcare providers is extremely limited). If the second opinion differs from that in the employee’s certification, a third opinion (at the County’s expense) may be obtained from a healthcare provider selected or approved jointly by the County and the employee. The third opinion will be final and binding.
- h. The County may request recertification (at the employee’s expense) by a healthcare provider in connection with an absence upon expiration of any certification or recertification previously provided. However, the County may request a recertification sooner if (i) the employee requests an

extension of leave; (ii) the circumstances described by the previous certification have changed significantly; or (iii) the County receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

- i. The employee must provide the recertification no later than 15 calendar days after the request, unless it is not practicable to do so despite the employee's diligent efforts.
- j. Certifications must be provided to the County Administrator, unless otherwise specified by the County.
- k. Failure to provide a required certification may result in a delay of FMLA leave.
- l. An employee must periodically provide the County with notice regarding his or her status and intention to return to work.

#### F. Procedure

1. An employee's leave request and any required certification must be submitted to the County Administrator, unless otherwise specified by the County. The County Administrator may consult with the employee's Supervisor or County Administrator before either approving or disapproving all requests.
2. Following approval or disapproval, a copy of the leave request and a letter of approval or disapproval will be sent to the employee.
3. The original leave request and any original certification will be kept in the employee's medical leave file, separate from the employee's personnel file.

#### G. Benefits During Leave

1. During any approved FMLA leave, the employee may retain medical coverage under the same terms and conditions as if he/she was actively working, may select any newly offered medical coverage, and may commence or change medical coverage at any open enrollment date or other date during the leave at which coverage could have been begun or changed had the leave not been taken.
2. Any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period.
3. If the FMLA leave is substituted paid leave, the employee's share of premiums for medical coverage must be paid by the method normally used during any paid leave (i.e. a payroll deduction). If FMLA leave is unpaid, the

County will require that the employee pay his or her share of premiums for medical coverage to the County or directly to the insurance carrier.

4. The County's obligations to maintain health insurance coverage cease under FMLA if the employee's premium payment is more than 30 days late, provided that the County will first mail written notice to the employee notifying the employee that the payment has not been received. Such notice shall be mailed to the employee at least 15 days before coverage is to cease.
5. If an employee does not return to work for the County for at least 30 calendar days after completion of his or her FMLA leave, the County may recover its share of health plan premiums during a period of unpaid FMLA leave from an employee. No repayment will be required, however, if the failure to return to work was due to (i) the continuation, reoccurrence or onset of either a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember; or (ii) other circumstances beyond the employee's control.
6. The employee's rights to benefits other than group health benefits during a period of FMLA leave is to be determined in accordance with the County policy for providing such benefits when employees are on other forms of leave (i.e. vacation leave).
7. If an employee gives notice of his or her intent not to return to work, the County's obligations under the FMLA to maintain health benefits (subject to COBRA requirements) cease.
8. Vacation, holiday, and sick leave benefits will not accrue during FMLA leave. When an employee returns from leave, he or she will start to accrue benefits again.

#### H. Return to Work and Job Restoration

1. Notice of return from FMLA leave and certification regarding return from employee medical leave.
  - a. An employee should provide the County two days' prior notice of his or her anticipated return to work, where feasible. If possible, the employee should provide as much notice as possible.
  - b. In the case of employee medical leave, the employee must provide a certification from his or her healthcare provider that the employee is able to resume work. Such certification should address only the health condition that caused the need for FMLA leave and should state whether the employee is able to perform all of the essential duties of his or her job and whether there are any reasonable accommodations that the County should make for the employee due to the employee's health condition in

order for the employee to return to work. Such certification must be provided at or about the time the employee notifies the County of his or her anticipated return to work, and prior to returning to work. The cost of the certification shall be borne by the employee.

2. Job restoration at the end of FMLA leave.
  - a. After the end of an approved FMLA leave and the provision of any required notice of return and any certifications regarding the ability to return, the employee will be returned to the position he or she held immediately before the leave or to an equivalent position, with equivalent benefits, pay and other terms and conditions of employment.
  - b. Notwithstanding the above, the employee shall have no greater right to job restoration or to other benefits and conditions of employment than if the employee had been continuously at work and not taken FMLA leave (e.g. if the employee would have been laid off during the leave) or if the employee was hired for a specific term or only to work on a specific project and the term or project has ended.

#### I. Termination of FMLA Leave

1. FMLA leave will automatically terminate and all of the employee's rights during or following FMLA leave under this policy will automatically terminate if and as of the date the employee notifies the County of the employee's intent not to return to work.
2. If an employee fails to comply with the requirements of this policy (e.g., fails to supply any necessary medical certifications), the County may delay or, in some instances, terminate or deny the employee's FMLA leave and employment. In such case, all of the employee's rights during or following FMLA leave under this policy will automatically terminate. If an employee on FMLA leave takes any actions which would entitle the County to terminate the employee's employment if he or she were an active employee, the County may terminate the employee's FMLA leave and employment. In such case, all of the employee's rights during or following FMLA leave under this policy will automatically terminate.

#### J. Miscellaneous

1. This policy shall be interpreted in a manner consistent with the FMLA, and all future amendments thereto, and shall provide no rights and imposes no obligations other than those required by the FMLA. To the extent that any provision of this policy conflicts with the FMLA or its regulations, the FMLA and its regulations shall govern.
2. The County is granted discretion to interpret and apply this policy.

3. This policy may be modified or amended by the County at any time and from time to time.
4. If an employee exhausts all available FMLA leave without returning to work, the County reserves the right to terminate the employee's employment.