

	P - §20	Policy Name:	Current Version Approved:
		Family Medical Leave	
	Prepared By:	Adopted:	
	Human Resources	September 1, 1993	
	Amended:		
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A. PURPOSE

In accordance with the Family and Medical Leave Act (FMLA), the County will grant up to 12 weeks of unpaid leave during a 12-month period to eligible employees (or up to 26 weeks of military caregiver leave).

The purpose of this policy is to provide a general description of employees' FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

B. DEFINITIONS

Child - means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18 or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

Family - is defined as the employee's spouse, children, and parents.

Fitness for Duty - is possessing the physical, emotional, and mental capacities to safely and effectively perform the essential functions of an employee's job, with or without reasonable Americans with Disabilities Act accommodation, in a manner that does not present a direct threat of harm to self or others.

Health Care Provider - is a licensed Doctor of Medicine or osteopathy or any other person determined by the U.S. Secretary of Labor to be capable of providing healthcare service.

Key Employee - is defined as a salaried FMLA-eligible employee who is among the highest-paid 10 percent of all County employees.

Parent - means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law."

Qualifying exigency - includes short-notice deployment, military events and activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities that arise out of active duty, provided that the employer and employee agree, including the agreement on timing and duration of the leave.

Serious health condition - means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider that causes the employee to be absent from work on a recurring basis or for more than three days.

Spouse - means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in common law or same-sex marriage.

Week - is defined as the authorized regularly scheduled hours of the employee's position.

Year - is defined as a rolling 12-month period measured backward from the date an employee uses FMLA leave.

C. ROLES AND RESPONSIBILITIES

Employees – All employees requesting FMLA must provide verbal or written notice of the need for leave to the Human Resources Department. If the need is foreseeable, the employee must provide at least 30 days' notice.

Supervisors – Must recognize when an employee's absence may fall under FMLA. Supervisors are responsible for responding to employee leave requests and notifying Human Resources as soon as an employee is absent for more than 3 days due to a personal or family member illness or injury.

Human Resources – The Human Resources Department must provide employees with information about the leave designation process and explain any required documentation. HR is responsible for notifying the employee, employee's supervisor and department head upon designation and approval of family medical leave, as well as facilitating the return to work process.

D. POLICY

Albemarle County provides job-protected, unpaid leave to eligible employees for a qualifying condition under certain circumstances described in accordance with the Family and Medical Leave Act of 1993 and all subsequent amendments.

1. Eligibility

To be eligible for leave under this policy, employees must meet all of the following requirements:

- Have worked at least twelve (12) months for Albemarle County.
- Have worked at least 1,250 hours for Albemarle County over the twelve (12) months preceding the date the leave would commence.
- Have not used all available FMLA Leave within the 12-month rolling year.

3. Reasons for Leave

To qualify as FMLA leave under this policy, the leave must be for one of the following reasons:

- The birth of a child or placement of a child with the employee for adoption or foster care.
- To care for a spouse, child, or parent who has a serious health condition.
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job.
- For any qualifying exigency arising out of the fact that a spouse, child, or parent is a military member on covered active duty or on call to covered active-duty status.
- To care for a covered service member with a serious injury or illness.

4. Amount of Leave

- A. An eligible employee can take up to 12 weeks of FMLA leave during any 12-month period. The County will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the County will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave.
- B. An eligible employee can take up to 26 weeks for the FMLA military caregiver leave during a single 12-month period. For this military caregiver leave, the County will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.
- C. Eligible spouses who both work for the County may only take a combined total of 12 weeks of leave for the birth of a child, adoption, or placement of a child in foster care, or to care for a parent with a serious health condition. Both may only take a combined total of 26 weeks of leave to care for a covered injured or ill service member (if each spouse is a parent, spouse, child or next of kin of the service member).

5. Intermittent Leave or Reduced Work Schedule

A health care provider may necessitate an “intermittent” leave or reduced leave schedule to care for a seriously ill family member or for the employee’s own serious health condition where the need for leave is foreseeable and based on planned medical treatment. In the case of a reduced leave schedule or intermittent use of leave, the health care provider must indicate on the Health Care Provider (WH-380) the need for the leave.

The County will attempt to find work for the employee in accordance with medical provider restrictions and so that it does not place an operational hardship on the department or impede service to the community. As such, the County may temporarily transfer the employee to an available alternative position with equivalent pay and benefits.

For the birth, adoption or foster care of a child, the County and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. Leave for birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.

When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the County's operations.

6. Use of Paid and Unpaid Leave

- A. An employee who is taking FMLA leave because of the employee's own serious health condition, or the serious health condition of a family member will first be compensated using any accrued sick leave and sick bank benefits, as applicable. Sick leave will run concurrently, until exhausted or up to a maximum 12 weeks, with the FMLA leave if the reason for the FMLA leave is covered by the adopted sick leave policy.
- B. The remainder, if any, of the family medical leave requested will be paid from accrued annual leave and earned compensatory leave prior to the employee receiving unpaid leave, except that the employee may save one (1) week of annual leave for use at a later time.
- C. An employee who is using military FML leave for a qualifying exigency must use all paid annual leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid annual, or sick leave (as long as the reason for the absence is covered by the County’s sick leave policy) prior to being eligible for unpaid leave.
- D. Employees on unpaid FML are not eligible for any unemployment benefits.

7. Intent to Return to Work

- A. When FMLA leave was for the employee's own serious health condition, certification from the health care provider releasing the employee to work is required.
- B. If an employee is medically certified to return to work in a restricted capacity or through alternative schedule arrangements, management from the home department and Human Resources will discuss possible options with the employee.
- C. The County may require a second opinion by a health care provider of its choice, and at its expense. If the two opinions differ, a third opinion may be requested from a provider selected jointly by the employee and the County. This third opinion, to be paid for by the County, is final and binding. It is the employee's responsibility to provide the County with up-to-date medical status while on FML.

8. Restoration to Position

When an eligible employee is released to return to work following FML, the employee will be restored to the position held at the time the leave began or to an equivalent position with equivalent benefits, compensation and other terms and conditions of employment. In order to be guaranteed restoration, the employee must return to work at or before the end of the 12-week FML period.

Certain "key" employees may be denied job restoration. A "key" employee is defined as a salaried FMLA-eligible employee who is among the highest-paid 10 percent of all County employees. A key employee will be notified as soon as practicable after receipt of a request for FML that he is considered to be a key employee.

9. Unable to Return to Work

If an employee is medically unable to return to work at the end of the 12 weeks of FML leave, Additional time off may be granted, at the discretion of the County and based upon the likelihood of the employee returning to work at full capacity.

The employee may reach maximum medical improvement (MMI) meaning treatment options have been exhausted and the condition may not improve any further allowing the employee to return to full duty at the job the employee had prior to the injury. If the employee's absence exceeds six months or if the County's circumstances have changed during the employee's absence so as to make it impossible or unreasonable not to discharge the employee, Human Resources will begin the dismissal process. This is a non-disciplinary termination made based on the fact that the employee is unable to meet the essential functions of the job. (Code of Virginia § 40.1-27.1.)

10. Record Keeping

The Department of Human Resources shall maintain confidential medical records necessary to demonstrate compliance with FMLA. Such medical and health records are kept separate from employment documents and are exempt from Freedom of Information Act (FOIA) inquiries.

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