



## WASHOE COUNTY POLICY FAMILY AND MEDICAL LEAVE

### Policy Statement

In accordance with the Family and Medical Leave Act (FMLA) of 1993, Washoe County will provide up to 12 weeks of family and medical leave during any 12-month period to eligible employees. The leave may be paid, unpaid, or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy. This policy is a summarization of Washoe County's and the County's employees' rights and duties under the FMLA and Code of Federal Regulations 29 C.F.R. §825.100 through §825.800 and is not meant to be an exhaustive statement of the County's or its employees' rights and duties.

### Eligibility

Employees must have at least 12 months of employment with Washoe County and have worked at least 1,250 hours in the 12 months immediately preceding the leave.

### Qualifying Reasons

- *For birth of the employee's child and to care for the newborn child after birth, or placement of a child with the employee for adoption or foster care and to care for the child.* Leave must occur within the first year after the event. If both husband and wife are employed by the County, leave is limited to a combined total of 12 workweeks each 12-month period. Leave may be granted on a continual basis, or if the department head agrees, intermittently or on a reduced leave schedule.
- *To care for the employee's spouse, child, or parent, who has a serious health condition.* Certification of Health Care Provider is required. Leave may be granted on a continual basis, intermittent basis, or on a reduced leave schedule if medically necessary. Child includes biological, adopted, stepchild, foster child, legal ward, or a child of a person standing in loco parentis. Parent includes biological parent, or a person who stands or stood in loco parentis when the employee was a child. Parent does not include "in-laws". "Loco Parentis" is defined as a person who has/had the day-to-day responsibilities to care for and provide financial support to a child, and need not have a biological or legal relationship.
- *Where an employee has a serious health condition that makes the employee unable to perform his/her essential job functions.* Certification of Health Care Provider is required. Leave may be granted on a continual basis, intermittent basis, or reduced leave schedule if medically necessary.

## **Definition of a Serious Health Condition**

The FMLA's definition of the term "serious health condition" is very broad and is intended to cover a variety of physical and mental conditions. A serious health condition is defined as an illness, injury, impairment or physical or mental condition that involves:

- Inpatient care (i.e. an overnight stay) in a hospital, hospice or residential medical care facility including any period of incapacity, treatment therefore, or recovery; or
- Continuing treatment by, or under the supervision of, a healthcare provider for a serious health condition which includes a period of incapacity of more than three (3) consecutive calendar days; or
- Any period of incapacity due to pregnancy or for prenatal care; or
- Any period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatments by a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider; or
- A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
- Any period of absence to receive multiple treatments including recovery therefrom by a health care provider

### **Examples of a serious health condition may include, but are not limited to:**

- Heart attacks or heart conditions requiring bypass surgery
- Most cancers
- Back conditions requiring extensive therapy or surgery
- Pneumonia
- Severe arthritis
- Severe nervous disorders
- Pregnancy, miscarriages, complications or illnesses related to pregnancy (e.g., severe morning sickness) and need for prenatal care
- Childbirth and recovery from childbirth
- A parent or spouse suffering from Alzheimer's disease or clinical depression

**Examples of what is not a serious health condition** are short-term conditions requiring only brief treatment and recovery. Excluding serious complications, examples include:

- The common cold
- The flu, earaches, upset stomach, minor ulcers
- Headaches, other than migraines
- Routine dental or orthodontia problems and periodontal disease
- Voluntary or cosmetic treatments

**Substance Abuse as a Serious Health Condition** is covered under the FMLA provided that the conditions of a "serious health condition" are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence

because of the employee's use of a substance, rather than for treatment, does not qualify for FMLA leave.

### **Definition of a Health Care Provider**

- Doctor of medicine or osteopathy that is authorized to practice medicine or surgery
- Other health care providers include:
  - Podiatrist
  - Dentist
  - Clinical Psychologist
  - Clinical Social Worker
  - Optometrist
  - Chiropractors authorized to practice
  - Nurse practitioner
  - Nurse midwife
  - Christian Science practitioner as provided for in 29 CFR 825.118
    - Any provider covered under employer group health plans
    - A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

### **Application Process**

In all cases, an employee requesting leave must complete an "Application for Family and Medical Leave" and return it to their Department HR Representative. The completed application must state the reason for the leave, the duration of the leave, the Certification of Health Care provider (if required), and the starting and ending dates of the leave.

In the event the leave is an emergency and the employee is not able to meet personally with the Department HR Representative, the information may be gathered via telephone or email, and the forms will be mailed to the employee or their representative.

### **Notice By Employee**

The employee will be required to provide at least 30 days advance notice when the leave is "foreseeable", or as soon as practicable if the leave was unforeseeable. A reasonable effort should be made to schedule leave so as to not unduly disrupt the department's operations. In all situations, the employee must complete the County's "Application for Family and Medical Leave" prior to starting the leave period. However, emergency FMLA leave may be approved based on informal communication with the department head and the required application may be completed after the FMLA leave begins.

### **Certification of Health Care Provider**

An application for leave based on the serious health condition of the employee or the employee's spouse, child or parent must also be accompanied by a "Certification of Health Care Provider" completed by the applicable health care provider. The

certification must state the date on which the health condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition. The “Certification of Health Care Provider” and the “Application for Family and Medical Leave” must be submitted to the department HR representative at least 15 days after the employee is notified of this requirement, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

If requested by the County, the employee will obtain a second or third opinion from a physician, selected by and paid for by the County, and a fitness for duty report to return to work. If a third opinion is required, a physician will be selected by mutual agreement between the County and the employee, with expenses paid by the County.

Failure to comply with the above requests by the County may result in a delay in the granting of or a denial of the request for FMLA leave and/or in termination of the employee.

### **Intermittent Leave or Reduced Leave Schedule**

In some circumstances, FMLA leave may be taken on an intermittent or reduced leave schedule (part-time or reduced hours) basis; this might include working a reduced number of hours per day, or days per week. Intermittent leave is contingent upon medical necessity and employer approval.

- *For Birth or Adoption:* FMLA permits an employee taking leave for birth or because of placement for adoption or foster care to take leave intermittently or by working a reduced workweek. **This requires approval by the County.**
- *For Medical Necessity:* Intermittent leave to care for a seriously ill family member or because of the employee's own serious health condition may be taken whenever “medically necessary”. The County may place the employee in an alternative position, which better accommodates intermittent leave. **This will require a Physician's Statement.**

### **Health Benefits**

During any period of unpaid FMLA leave, Washoe County will maintain the employee's health coverage under the “group health plan” for the duration of FMLA leave on the same terms as if the employee was at work. If paid leave is substituted for unpaid FMLA leave, the employee's share of premiums will be deducted from the employee's paycheck.

The employee must continue to pay the employee's share of the premium for dependent coverage, when applicable, which will be billed each pay period by the Risk Management Office. Failure to pay the premium within the requested period will result in termination of dependent coverage. The employee will have the option to reinstate dependent coverage upon return to full time employment with no waiting period or qualification requirements.

If the employee fails to return to work after taking FMLA leave **for reasons other** than the continuation, recurrence, or onset of a serious health condition that would qualify for

a FMLA leave, or other circumstances beyond the employee's control, **the employee is responsible to repay the County for the premiums paid for health coverage during the FMLA leave.** Premium cost will be automatically deducted from the final paycheck, sick leave or vacation payout, if and to the extent permitted by law, or the County may institute legal action to recover such costs.

### **Job Protection**

Washoe County will restore the employee to his/her original or an equivalent position with equivalent pay, benefits, and other employment terms upon return from FMLA leave.

When an employee is on unpaid leave, they will not accrue vacation or sick leave. For unpaid leave over 30 days, the employee will have an adjusted anniversary and career incentive date.

### **Pay Status**

The employee may elect to use accrued annual, sick or personal leave, in lieu of unpaid leave time for any FMLA-qualifying purpose. Sick leave may be used to care for a seriously ill family member as defined by FMLA or for the employee's own serious health condition contingent upon the circumstances meeting the requirements for use of sick leave under either County code or the terms of an applicable collective bargaining agreement.

### **Tracking**

An eligible employee can take up to 12 weeks of leave under this policy during any 12-month period. Washoe 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, Washoe County will compute the amount of leave the employee has taken under this policy and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

### **Recertification**

Washoe County may request recertification of a serious health condition every 30 days or more frequently if circumstances described by the previous certification(s) have changed significantly (for example, a change in the duration or frequency of absences, the severity of the conditions, other complications), or the County receives information which casts doubt upon the employee's stated reason for the absence.

### **Return to Work**

When FMLA leave is granted for the employee's own health condition, the employee must provide a Physician's Release and/or Fitness for Duty Certification on the appropriate County form before returning to work. Should the return to work date be

sooner than anticipated, the employee is required to notify their supervisor at least **two (2) work days** prior to the date he/she intends to report to work.

### **Additional Leave**

Should an employee require additional leave beyond the 12 weeks maximum under FMLA, the County's sick leave policy or the sick leave provisions of the collective bargaining agreement would apply. Insurance premiums for any additional leave without pay must be paid by the employee.

### **Privacy of Medical Information**

Records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members will be maintained by the Human Resources Department as confidential medical records in separate files/records from the employee's personnel file. The information may be accessed by the following persons:

- Supervisors and managers may be informed of necessary restrictions on the work or duties of an employee and necessary accommodations;
- First aid and safety personnel may be informed, when appropriate, if an employee's physical or medical condition might require emergency treatment; and
- Government officials investigating compliance with the FMLA shall be provided relevant information on request.

## FAMILY AND MEDICAL LEAVE ACT (FMLA) ADDENDUM

### Overview

On November 17, 2008, the United States Department of Labor (DOL) published its final rule to implement the first ever amendments to the FMLA. These new regulations become effective on **January 16, 2009** and address two distinct subjects: 1) the new revisions contain a number of important changes and clarifications to the original FMLA regulations regarding such issues as the definition of “serious health condition,” use of paid leave, employee and employer notice obligations, and the medical certification and recertification process; and 2) they provide clarifications and additional details concerning the new military family leave entitlements adopted by Congress in January 2008.

### FMLA Summary of Changes

The following are brief descriptions of some of the revisions/clarifications to the current FMLA regulations:

“CURRENT” FMLA	“REVISED” FMLA 2009
<b>Definition of “Serious Health Condition”</b>	
More than three consecutive, full calendar days of incapacity plus “two visits to a health care provider.”	The two visits must occur within 30 days of the beginning of the period of incapacity.
More than three consecutive, full calendar days of incapacity plus a regimen of continuing treatment.	The first visit to the health care provider must take place within seven days of the first day of incapacity.
Chronic conditions that result in periodic incapacity and that require periodic treatment by a health care provider.	The required “periodic visits” are defined as at least two visits to the health care provider per year.
<b>Substitution of Paid Leave</b>	
Different procedural requirements are applied to the use of vacation or personal leave than to medical or sick leave. Additionally, the DOL has treated family leave differently than vacation and personal leave.	The employer may require use of any form of paid leave during FMLA leave. In addition, an employee electing to use any type of paid leave concurrently with FMLA leave must follow the same terms and conditions of the employer’s policy that apply to other employees for the use of such leave.
<b>Fitness for Duty Certifications</b>	
Employers are allowed to enforce uniformly-applied policies or practices that require all similarly-situated employees who take leave to provide a certification that they are able to resume work.	An employer may require that the certification specifically address the employee’s ability to perform the essential functions of the employee’s job. Second, where reasonable job safety concerns exist, an employer may require a fitness-for-duty certification before an employee may return to work when the employee takes intermittent leave.

<b>Medical Certification Process</b>	
An employer, with the employee's permission, may have its own health care provider contact the employee's health care provider in order to clarify or authenticate a FMLA certification.	The employee's permission is no longer required for the employer's health care provider to contact the employee's health care provider. But the employer's representative contacting the health care provider must be a health care provider, human resource professional, a leave administrator, or a management official, <i>but</i> in no case may it be the employee's direct supervisor.
An employer must give the employee notice of incomplete medical certification and provide the employee with an opportunity to correct it.	If an employer deems a medical certification to be incomplete or insufficient, the employer must specify in writing what information is lacking, and give the employee seven calendar days to correct the deficiency.
Subsequent recertification of the same serious or chronic health condition may be requested on a reasonable basis.	Employers may request a new medical certification each leave year for medical conditions that last longer than one year.

#### Additional Changes and Clarifications

- **Intermittent Leave:** Employers may now use whatever minimum increment of time (15 mins, ½ hour, and hour) it uses to account for the use of other forms of leave for purposes of calculating intermittent leave use, provided that the increment is no greater than one hour.
- **Employers Notice Obligations:** Covered employers must provide written notice to each employee of his/her FMLA rights at the time of hire. Employers are obligated to provide notice in the language in which employees are literate, even if that is not English. The new rules also allow electronic notification, if certain requirements are met.
- **Light Duty:** Time spent on light duty does not count toward an employee's FMLA leave entitlement.
- **Bonuses:** Employers may consider FMLA absences in determining bonuses and other incentive rewards, providing that such treatment is the same for non-FMLA leave.
- **Designation Periods:** Employers now have five, rather than two, business days to designate leave as FMLA qualifying.

#### Military Family Leave

On January 28, President Bush signed into law the National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181. Section 585(a) of the NDAA which

amended the FMLA to provide eligible employees working for covered employers two important new leave rights related to military service:

1. **Military Caregiver Leave (also known as Covered Servicemember Leave):** Eligible employees (the spouse, son, daughter, parent, or next of kin) of a currently active (i.e. not retired) member serving in the military will be able to take up to 26 workweeks of leave in a “single 12-month period.” The leave is to be taken to care for a covered service member with a serious illness or injury incurred in the line of duty. This 26 workweek entitlement is a one-time entitlement with its own 12-month period, although additional leave for this purpose may be available for subsequent injuries or additional service members in the family. Appropriate documentation including a medical certification substantiating the employee’s need for leave will be required.
2. **Military Exigency Leave:** This new 12-week FMLA leave entitlement helps families of members (spouse, son, daughter, or parent) of the National Guard and Reserves manage their affairs while the member is on active duty in support of a contingency operation. This provision makes the normal 12 workweeks of FMLA job-protected leave available to eligible employees with a covered military member serving in the National Guard or Reserves to use for “any qualifying exigency” arising out of the fact that a covered military member is on active duty or called to active duty status in support of a contingency operation. The DOL’s final rule defines qualifying exigency by referring to a number of broad categories for which employees can use FMLA leave: (1) Short-notice deployment; (2) Military events and related activities (such as military ceremonies, events, and similar activities related to the service member’s call to duty or departure); (3) Childcare and school activities; (4) Financial and legal arrangements; (5) Counseling from a chaplain, minister, military service organization, or other non-medical provider; (6) Rest and recuperation while the service member is home on short-term leave; (7) Post-deployment ceremonies and activities associated with the service member’s return home; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

### **New FMLA Forms**

The DOL has updated many of its optional forms for requesting and designating FMLA Leave, and created new forms for military caregiver leave. These new forms will be available as soon as the policy is updated. Should you have a qualifying event beginning January 16, 2009, please contact Human Resources for the appropriate form (i.e. Military Family Leave).

For more information about the final rules visit the DOL’s website at:  
<http://www.dol.gov/esa/whd/fmla/finalrule.htm>.

# Family and Medical Leave Act (FMLA)<sup>1</sup>

## Frequently Asked Questions and Answers

### ***Q: Have changes recently taken place with regard to the FMLA?***

Yes. On November 17, 2008, the Department of Labor (DOL) published its final rule to implement the first-ever amendments to the Family and Medical Leave Act (FMLA) which provide new military family leave entitlements and to update the regulations under the 15 year-old FMLA. These new regulations became effective on **January 16, 2009**. (See FMLA Regulations 2009 Addendum on the HR Website)

The following links will provide FAQ relating to the new regulations:

<http://www.dol.gov/esa/whd/fmla/finalrule/MilitaryFAQs.pdf> (Military FAQ)

<http://www.dol.gov/esa/whd/fmla/finalrule/NonMilitaryFAQs.pdf> (Non-Military FAQ)

### ***Q: Which employees are eligible to take FMLA leave?***

Employees are eligible to take FMLA leave if they have worked for their employer for at least 12 months, and have worked for at least 1,250 hours over the previous 12 months, and work at a location where at least 50 employees are employed by the employer within 75 miles.

(The 12 months do not have to be continuous or consecutive; all time worked for the employer is counted. The 1,250 hours include only those hours actually worked for the employer. Paid leave and unpaid leave, including FMLA leave, are not included. Your individual record of hours worked would be used to determine whether 1,250 hours had been worked in the 12 months prior to the commencement of FMLA leave. As a rule of thumb, the following may be helpful for estimating whether this test for eligibility has been met; 24 hours worked in each of the 52 weeks of the year; or over 104 hours worked in each of the 12 months of the year; or 40 hours worked per week for more than 31 weeks (over seven months) of the year.)

### ***Q: How much leave am I entitled to under FMLA?***

If you are an "eligible" employee, you are entitled to 12 weeks of leave for certain family and medical reasons during a 12-month period.

### ***Q: How is the 12-month period calculated under FMLA?***

Washoe County uses a "rolling" 12-month period measured backward from the date an employee uses FMLA leave.

### ***Q: Does workers' compensation leave count against an employee's FMLA leave entitlement?***

FMLA leave and workers' compensation leave can be used simultaneously, provided the reason for the absence is due to a qualifying serious illness or injury and the employer properly notifies the employee in writing that the leave will be counted as FMLA leave.

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<sup>1</sup> Source: [www.dol.gov/elaws/esa/fmla/faq.asp](http://www.dol.gov/elaws/esa/fmla/faq.asp)

***Q: Does leave taken due to pregnancy complications count against the 12 weeks of FMLA leave for the birth and care of my child?***

Yes. An eligible employee is entitled to a total of 12 weeks of FMLA leave in a 12-month period. If the employee has to use some of that leave for another reason, including a difficult pregnancy, it may be counted as part of the 12-week FMLA leave entitlement.

***Q: Does maternity leave or pregnancy disability qualify as FMLA leave?***

Yes and Washoe County's practice is to automatically designate maternity or pregnancy leave as FMLA leave (if they qualify) and to require the employee (female) to use sick leave (up to 240 hours if available) to substitute for unpaid FMLA leave. Also per County practice, a male employees may substitute up to 24 hours (if available) of sick leave for unpaid FMLA leave for a birth of a child.

For all other FMLA qualifying leave, Washoe County's practice provides that the employee can elect to substitute unpaid leave for accrued paid leave such as vacation or sick leave per the collective bargaining agreements. Compensatory time cannot be used in conjunction with FMLA.

***Q: If an employer fails to tell employees that the leave is FMLA leave, can the employer count the time they have already been off against the 12 weeks of FMLA leave?***

In most situations, the employer cannot count leave as FMLA leave retroactively. Remember, the employee must be notified in writing that an absence is being designated as FMLA leave. If the employer was not aware of the reason for the leave, leave may be designated as FMLA leave retroactively only while the leave is in progress or within two business days of the employee's return to work.

***Q: Who is considered an immediate "family member" for purposes of taking FMLA leave?***

An employee's spouse, children (son or daughter), and parents are immediate family members for purposes of FMLA. The term "parent" does not include a parent "in-law". The terms son or daughter do not include individuals age 18 or over unless they are "incapable of self-care" because of mental or physical disability that limits one or more of the "major life activities" as those terms are defined in regulations issued by the Equal Employment Opportunity Commission (EEOC) under the [Americans With Disabilities Act \(ADA\)](#).

***Q: May I take FMLA leave for visits to a physical therapist, if my doctor prescribes the therapy?***

Yes. FMLA permits you to take leave to receive "continuing treatment by a health care provider," which can include recurring absences for therapy treatments such as those ordered by a doctor for physical therapy after a hospital stay or for treatment of severe arthritis.

***Q: Do I have to give my employer my medical records for leave due to a serious health condition?***

No. You do not have to provide medical records. The employer may, however, request that, for any leave taken due to a serious health condition, you provide a medical certification confirming that a serious health condition exists.

***Q: Can my employer require me to return to work before I exhaust my leave?***

Subject to certain limitations, your employer may deny the continuation of FMLA leave due to a serious health condition if you fail to fulfill any obligations to provide supporting medical certification. The employer may not, however, require you to return to work early by offering you a light duty assignment.

***Q: Can my employer make inquiries about my leave during my absence?***

Yes, but only to you. Your employer may ask you questions to confirm whether the leave needed or being taken qualifies for FMLA purposes, and may require periodic reports on your status and intent to return to work after leave. Also, if the employer wishes to obtain another opinion, you may be required to obtain additional medical certification at the employer's expense, or rectification during a period of FMLA leave. The employer may have a health care provider representing the employer contact your health care provider, with your permission, to clarify information in the medical certification or to confirm that it was provided by the health care provider. The inquiry may **not seek additional information** regarding your health condition or that of a family member.

***Q: Can my employer refuse to grant me FMLA leave?***

If you are an "eligible" employee who has met FMLA's notice and certification requirements (and you have not exhausted your FMLA leave entitlement for the year), you may **not** be denied FMLA leave.

Employees who give unequivocal notice that they do not intend to return to work lose their entitlement to FMLA leave.