

COUNTY OF WASHINGTON  Pennsylvania	FAMILY AND MEDICAL LEAVE ACT	PAGE: 1 of 8  July 15, 2010
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**POLICY:**

It is the policy of Washington County to abide by the obligations imposed by the Federal Family and Medical Leave Act of 1993 (FMLA) and its 2009 amendments. It is the County's intention to comply fully with the requirements of the FMLA at all times and with respect to all employees. The County's FMLA policy is to read in conjunction with the current County policies, practices and collective bargaining agreements. An employee is entitled to utilize the greater benefit of any policy provided that it is applicable to said employee.

**SCOPE:**

This policy applies to all employees.

**PROCEDURE:**

**A. Eligibility and Leave Requirements:**

1. Washington County (the "County") is covered under the Family and Medical Leave Act of 1993, as amended ("FMLA" or "Act"). In instances where the County has 50 or more County employees on the payroll, employees may be eligible for benefits under the FMLA. This policy also covers employees who may be a part of a collective bargaining unit. This policy is not meant to conflict with the terms or conditions of any CBA and if such conflict occurs, the terms of the CBA prevail. For purposes of this policy, FMLA leave includes leave for covered service members unless otherwise indicated.

2. **Family and Medical Leave:** Any County employee with at least one (1) year of service and who has worked at least 1,250 hours in the last 12 months will be eligible to take up to 12 workweeks of FMLA leave during a 12 month period for any of the following reasons:

- a. The birth of a son or daughter and in order to care for such son or daughter (leave must be taken and completed within 12 months after birth), or
- b. The placement of a son or daughter with the employee for adoption or foster care and in order to care for the newly placed son or daughter (leave must be taken and completed within 12 months after placement), or
- c. To care for a spouse, son, daughter, or parent with a serious health condition, or
- d. An employee's own serious health condition that makes the employee unable to perform the functions of his/her job, or

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e. A qualifying exigency arising out of the fact that the employee's spouse, son/daughter or parent (but not in-law) is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. The term "covered active duty" means:

(i) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

(ii) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law under Section 101(a)(13)(B) of Title 10 of the United States Code.

3. **Servicemember Family Leave:** Any County employee with at least one (1) year of service and who has worked at least 1,250 hours in the last 12 months and who is the spouse, son, daughter, parent or closest blood relative of a covered service member will be eligible for up to 26 workweeks of Servicemember Family Leave during a single 12 month period to care for a service member who is:

- a. 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
- b. 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 (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

4. If an employee has been previously employed by the County, but has had a break in service of seven (7) years or more, that employee's past service with the County is not counted for FMLA eligibility purposes, EXCEPT:

- a. Where the break in service was due to fulfillment of the employee's military obligations in either the National Guard or the Reserves; or
- b. Where leave of more than seven (7) years is approved in a Collective Bargaining Agreement or other written document that concerns the County's intent to rehire the employee.

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5. During the single 12 month period described in the Servicemember Family Leave section (Paragraph A.3), an eligible employee shall be entitled to a combined total of 26 workweeks of leave under the Family and Medical Leave section and the Servicemember Family Leave section (Paragraphs A.2 and A.3). Nothing in this paragraph shall be construed to limit the availability of leave under the Family and Medical Leave section (Paragraph A.2) during any other 12 month period.

6. The 12 month period under the Family and Medical Leave section (Paragraph A.2) is calculated on a rolling basis beginning on the first day of eligible leave counting backwards 12 months from that date. Regardless of the method used by the County to calculate the 12 month period in the Family and Medical Leave section (Paragraph A.2), the County must always calculate the "single 12 month period" for the care of a covered service member under the Servicemember Family Leave section (Paragraph A.3) beginning on the first day of leave and ending 12 months thereafter.

7. FMLA leave for birth or placement under the Family and Medical Leave section (Paragraph A.2.a and A.2.b) must be taken at one time in consecutive days or weeks. Leaves of absence due to serious health conditions under the Family and Medical Leave section (Paragraph A.2.c and d) or covered service member leave, the Servicemember Family Leave section (Paragraph A.3), may be taken intermittently or on a reduced schedule, when medically necessary, and provided the employee complies with the procedures as set forth in the Family and Medical Leave section (Paragraph A.2).

8. If both spouses are employed by the County and are otherwise eligible for FMLA leave, they are permitted to take only a combined total of 12 workweeks leave during any 12 month period for reasons set forth in the Family and Medical Leave section (Paragraph A.2.a-c), or a combined total of 26 workweeks of leave during any single 12 month period for reasons set forth in the Servicemember Family Leave section (Paragraph A.3.a-b).

9. Employees are required to first utilize any accrued vacation time and personal days as part of their 12 workweeks of FMLA leave, or 26 workweeks of service member leave. Employees requesting FMLA leave due to their own serious health condition must first utilize any accrued sick leave, in addition to accrued vacation and personal leave, as part of their 12 week FMLA leave. Once accrued paid leave has been exhausted, the remainder of any FMLA leave shall be unpaid.

10. Any employee using unpaid FMLA leave shall not be entitled to holiday, bereavement, or jury duty pay while on such leave.

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11. During any period of FMLA leave, the County will continue to make premium payments to maintain an employee's health care coverage under the same terms and conditions as in existence on the date leave begins, or as changed during the period when the employee is on leave. However, this does not eliminate the requirement of employee co-payments for those employees who normally have co-payments towards their insurance coverage. Provisions for employee co-payments will be made at the time of leave request. If any co-payment is more than 30 days past due, the County will terminate health care coverage for the duration of the leave period. Coverage will be restored upon return to work.

12. The County will be entitled to recoup the costs of providing health care coverage for an employee during the leave period if the employee fails to return to work at the conclusion of his/her FMLA leave period. This obligation does not apply in a situation where the County grants an additional leave of absence and the employee subsequently returns to work or where the employee is unable to return to work for reasons beyond his/her control.

**B. Employee Responsibility:**

1. When requesting FMLA leave whether paid or unpaid, a 30 day advance written notice is required where the necessity for leave is foreseeable. Where the need for leave is not foreseeable, the employee must provide such notice as soon as practical (within one or two days of discovering the need for leave). Failure to provide such notice may result in the employee's leave being delayed.

2. The notice referred to in Paragraph B.1 shall include sufficient explanation of the reason for leave, the date on which leave is anticipated to begin, and the anticipated duration of the leave.

3. Employees requesting leave pursuant to the Family and Medical Leave section (Paragraphs A.2 c, d) or the Servicemember Family Leave section (Paragraph A.3) must, in conjunction with their relevant health care provider, submit medical certification of the need for leave prior to the start of the leave. Failure of the employee to provide the completed forms to the County within 15 days of the County's request for such forms may result in denial of leave until certification is provided or revoking an employee's entitlement to continued leave. An employee shall have seven (7) days to correct an incomplete or insufficient medical certification from the date the employee is notified of such a deficiency by the employer. Employees will be required to provide recertification of the serious health condition consistent with the Act. The County may request additional certification set forth in the regulations (§§825.309 (a-d), 825.310(c)) from an employee requesting leave to care for a covered Servicemember or an employee requesting leave for a qualifying exigency.

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4. Employees requesting an intermittent leave or leave on a reduced schedule due to a serious health condition under the Family and Medical Leave section (Paragraph A.2 c, d) or a serious injury or illness of a covered service member under the Servicemember Family Leave section (Paragraph A.3) must first make a reasonable effort to schedule any treatment so as to not unduly disrupt the operations of the County (if such need is reasonably foreseeable) and provide as part of the medical certification from the health care provider a statement as to why such leave is medically necessary. A medical certification form may be obtained by contacting the Human Resources Department.

5. Employees are required to notify the County of their intent to return to work every 30 days and, where applicable, are required to recertify their medical certification:

- a. Every 30 days in connection with an absence; or
- b. At the expiration of the minimum duration for the condition set forth in the certification or every six (6) months, whichever occurs first.

Recertification may be required sooner as set forth in the Act.

6. Employees returning from a leave due to their own serious health condition must provide a "Fitness for Duty/Return to Work" certification from their health care provider prior to reinstatement, if such certification is routinely required for employees returning from other forms of medical leave.

**C. County Responsibility:**

1. Within five (5) business days of an employee's request for FMLA leave, the County must provide the employee with an eligibility notice explaining whether the employee is eligible for FMLA leave, and if not, why leave is not available. The County shall designate any leave as FMLA leave in writing upon receiving sufficient information to determine that the leave qualifies, shall notify the employee of the amount of leave counted against the employee's FMLA entitlement and shall also inform the employee of this fact and of any paid vacation, personal or sick time that must be used as part of the 12 week FMLA leave, or 26 week Servicemember Family Leave.

2. If the County has reason to doubt the validity of any medical certification provided, the County may, at its own expense, require a second opinion of a health care provider approved or designated by the County, so long as the provider is not employed on a regular basis by the County. If there are conflicting medical opinions, a third opinion, which will be final and binding on both the County and the employee, may be required by the County, at the County's expense,

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from a health care provider approved jointly by the County and the employee. In addition, the County may seek clarification or authentication of a medical certification or recertification from the health care provider.

3. An employee who requests intermittent leave or a reduced leave schedule that is foreseeable based on planned medical treatment may be temporarily transferred, at the County's option, to an alternate position having equivalent pay and benefits for which the employee is qualified and which better accommodates recurring periods of leave.

4. The County will be responsible for keeping records required under the FMLA and for ensuring that all medical information is kept in a separate file which will be kept confidential except as required to coordinate the employee's leave.

**D. Restoration of Employment:**

1. Employees returning from a FMLA leave are generally entitled to be restored to their previous position or to an equivalent position with equivalent pay, benefits and other terms and conditions of employment. An employee will not be reinstated if he/she otherwise would not have been employed at the time reinstatement is requested. The County is not obligated to reinstate any employee whose job position is eliminated while on leave.

2. Employees designated by the County as "Key" employees may be denied restoration if necessary to avoid substantial grievous economic injury to the County's operations, in accordance with the express provisions of the FMLA. These key employees are among the ten percent most highly compensated salaried employees and will be notified of their status as key employees at the time they make their leave request. If it is anticipated that it may be necessary to deny restoration to a key employee, the County will notify that employee and offer him or her an opportunity to return to work. If that employee elects not to return to work, the County will nevertheless reconsider at the end of the leave whether or not it will be possible to reinstate that employee without suffering substantial and grievous economic injury.

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**E. Notification of Rights:**

“The County will not interfere with, restrain or deny the exercise of any right provided under the FMLA. The County will not discharge or discriminate against any person for opposing any practice made unlawful by the FMLA nor will it discriminate against or discharge any person because of involvement in any proceeding under or related to the FMLA. The Secretary of Labor is authorized to investigate and attempt to resolve complaints and violations and may bring an action in any federal or state court against the County for violating FMLA. The FMLA will be enforced by the Department of Labor’s Wage and Hour Division. An eligible employee may also bring a civil suit for violation of the FMLA. It should be noted that the FMLA does not affect any federal or state law prohibiting discrimination, nor does it supersede any state or local law which provides for greater family or medical leave benefits. The FMLA does not affect the County’s obligation to provide greater leave benefits that are required under a collective bargaining agreement or employee benefit plan or contract. No rights provided for under the FMLA may be diminished or waived by agreement, plan or contract. A copy of your rights under the FMLA is posted within County offices. Questions concerning the FMLA or your leave benefits should be directed to the Human Resources Department.”

**INTERPRETATION AND ADMINISTRATION:**

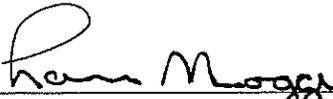
The Human Resources Department is responsible for the overall implementation and administration of this policy under the guidance of the County Solicitor.

The Board of Commissioners is responsible for the ultimate authorization and control of this policy.

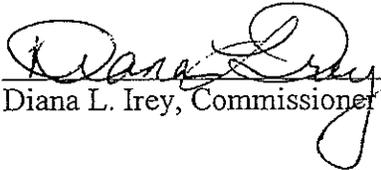
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ADOPTED this 15<sup>th</sup> day of July, 2010, per minute 885.

COUNTY OF WASHINGTON

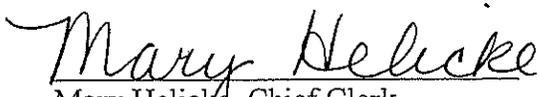
  
Larry Maggi, Chairman

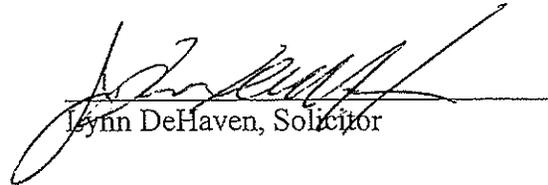
  
Bracken Burns, Commissioner

  
Diana L. Ireby, Commissioner

ATTEST:

Approved as to Form and Legality:

  
Mary Helicke, Chief Clerk

  
Lynn DeHaven, Solicitor

  
Charles Nichols,  
Director of Human Resources

**FAMILY AND MEDICAL LEAVE (FMLA) POLICY**

I acknowledge that I have received a copy of Washington County's policy on the Family and Medical Leave Act. I agree that if there is any provision in the policy I do not understand, I will seek clarification from the Human Resources Department.

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_