



Supervisor's Guide to FMLA Compliance



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SUPERVISOR'S GUIDE TO FMLA COMPLIANCE

As a supervisor or manager, you have a major role in assuring compliance with the federal FMLA regulations and the County's FMLA policy. Proper compliance is essential since FMLA regulations hold the employer responsible for ensuring that employees are aware of their FMLA rights and that they are made aware when they have taken FMLA leave or have the ability to take leave that qualifies under FMLA. The employer must also see that any required certification of FMLA leave is obtained and updated if necessary.

In this Supervisor's Guide, you will be provided with the basic procedure to follow as well as examples of leave scenarios and comments on how FMLA impacts them. Proper handling of FMLA leave situations can be divided into five separate areas which are:

- (1) employee eligibility
- (2) leave qualification
- (3) leave notification/documentation/reporting and
- (4) medical certification.
- (5) military certification (if applicable).

EMPLOYEE REQUESTS FOR LEAVE

Initially, employees only need to follow normal leave procedures when requesting Leave. Whether the leave is scheduled or unscheduled, the reason for the leave should be indicated on the leave request form. If the employee or family member calls in, you will still need to know the nature of the absence, so you should ask and complete a leave request form reflecting the information. Remember: the employee does not have to specifically assert his/her FMLA rights or request FMLA leave. The Leave Request Form should be used as the written notice of FMLA eligibility, qualification, and certification requirements.

NOTE: An employee may forfeit the protections provided in this policy if he or she does not give notice of the reason for the leave within two (2) days after his or her return to work. The employee's time away could be counted as unscheduled under the County's attendance policy. However, the employee may still remain eligible for FMLA leave.

STEP 1: DETERMINE ELIGIBILITY for FMLA

To be eligible, both conditions below must be met by the employee.

- Employed by the County at least 12 months, not necessarily consecutive, prior to the date of leave including part-time or temporary employment.
- Worked at least 1250 hours* in the consecutive 12 month period immediately prior to the beginning of the leave. Exclude all leaves, paid or unpaid, including paid holidays.

The following time **does** counts toward the 1250 hours:
EES National Guard or military time and other time physically at work.

The following time **does not** count toward the 1250 hours:
Annual leave
Time off work due to an on the job injury
Extended illness leave
Administrative leave (except when given for work days, e.g. training)
Holidays/Floating Holidays/Personal Day

*The 1250 hours are NOT prorated for employees working less than a 40 hour week.

Eligibility:

The supervisor should notify the employee of eligibility within 5 business days of the request for FMLA leave. If the employee is ineligible, the employer should inform the employee of at least one reason why, i.e. either the employee has not been employed for 12 months or the employee has not worked 1,250 hours.

If the employee is eligible, proceed to

STEP 2: DETERMINE FMLA QUALIFICATION STATUS

Things you should consider include the following:

- Is the condition a "serious health condition"? You may base your initial determination on verbal information. In cases where you are unsure of the determination, be sure to indicate FMLA is "pending."

Incapacitated more than 3 consecutive calendar days.

Continuing treatment (visits to a health care provider, prescription medications, physical therapy, etc.)

Conditions requiring only bed rest and/or over the counter medication are not considered "serious" under FMLA.

- Is the person with the serious health condition covered by FMLA? FMLA is for spouses, parents and children only, except for servicemember family leave which is also available for "next of kin". Child refers to children under 18 years unless disabled, or unless the leave is servicemember family leave or qualifying exigency leave.
- Workers' Compensation, Short Term Disability (STD) and Long Term Disability (LTD) absences are probably FMLA qualified.
- 12 weeks of FMLA leave is available each calendar year (January 1 start date) to eligible employees.

*The 12 week entitlement is calculated in hours, when necessary, based on the employee's normal work schedule. (e.g. a 30 hour per week employee would be entitled to 360 hours of FMLA).

- 26 weeks of servicemember family leave (inclusive of the 12 weeks mentioned above) is available in a 12-month period.

Ask questions of a general nature if the employee does not volunteer sufficient information.

- "Do you think you will need to see a doctor (health care provider)?" "Have you seen a health care provider?"
- "Are you taking prescription medication or under a prescribed treatment program?"
- "How (in what way) are you incapacitated from performing your job?"

If the employee is eligible and the leave qualifies, proceed to

STEP 3: PROVIDE PROPER AND TIMELY NOTIFICATION

A breakdown in communication at this step can result in noncompliance. Designating leave as FMLA is a supervisory responsibility. Departmental payroll personnel may not make this designation nor change leave codes on the time sheets without an accompanying leave request form signed by the supervisor.

- If the leave appears to qualify as FMLA, the supervisor must designate it as FMLA or FMLA Pending, even if the employee has not requested FMLA leave or has requested it not count as FMLA. The "pending/provisional" designation is appropriate when you have incomplete information about whether the leave qualifies, or are awaiting a doctor's statement (certification) or military document.
- The supervisor should fill in a specific time frame for providing medical certification when necessary on the leave request form, Part B. This must be no less than 15 days. The supervisor must follow up to re-designate leave for which requested certification is not received as unscheduled.
- The supervisor should give verbal confirmation of the FMLA designation and any requirements of the employee and follow-up with the required written response on a leave request form within 5 business days.
- It is the employer (supervisor) who is responsible for designating FMLA leave and requesting appropriate documentation. The employee DOES NOT have the option of having leave that qualifies under FMLA not designated as FMLA.

- Note: When an employee stacks two yearly entitlement periods in one continuous absence e.g. takes leave November through January, you should send the employee a new notice (leave request form) for the leave that begins in January.
- FMLA is unpaid leave. However, FLMA leave will be used concurrently with all other types of leave. Employees are required to substitute accrued paid leave, Extended Illness first and then Annual Leave, in accordance with Personnel Rules and the County's FMLA policy. Once available paid leave is exhausted, unpaid leave may be authorized.
- The employee is required to give advance notice whenever possible for procedures scheduled in advance (at least 30 days notice if possible). Certification should be provided by the time the leave begins, if possible. Additional documents, beyond that which would be required for Non-FMLA paid leave are not required except for intermittent or reduced schedule. For servicemember family leave or for qualifying exigency leave, (non-medical), official certification establishing entitlement to the leave is always required.
- If the leave is unpaid the following apply:

Employee should still give notice as soon as practicable. A family member or health care provider may do this; and

Certification should be provided by the employee within 15 days from the date the employer requests it. The employer (supervisor) should indicate this on Part II of the leave request form.
- Request a release to return to work "Fitness for Duty" note only if that is your usual departmental policy (written) for this length of absence or specific job classification. This request is made on the leave request form.

REMINDER: YOU MUST GIVE OR MAIL THE EMPLOYEE THEIR COMPLETED LEAVE REQUEST FORM COPY! THIS BECOMES THE EMPLOYER'S OFFICIAL NOTIFICATION AS REQUIRED UNDER FMLA.

STEP 4: OBTAIN MEDICAL CERTIFICATION

You should not confuse the terms "medical certification" with a "back to work or fitness for duty" note. They are separate and under FMLA have different requirements. When giving verbal or written instructions, you should be specific about what is required. [Remember that "back to work" notes may be requested as part of a non-discriminatory departmental policy relating to an employee's job classification or length of the absence and providing you have indicated this requirement by checking the appropriate box on the leave request.]

STEP 5: OBTAIN MILITARY DOCUMENTATION, IF APPLICABLE

A certification establishing that a servicemember's condition satisfies the requirements establishing an entitlement to servicemember family leave shall be required for all servicemember family leave, whether paid or unpaid.

Supervisors should request assistance from Employee Benefits to determine entitlement for the qualifying exigency and servicemember family leave.

REMINDER: Except for Qualified Exigency Leave and Servicemember Family Leave, a certification is not required for paid leave with the exception of intermittent or reduced schedule leave. Certification is required for all unpaid leave under this policy. You must inform the employee that certification will be required and you must mark the appropriate place on the leave request form. You must give the employee fifteen (15) days from your request to respond.

Whenever possible the FMLA medical certification form should be used. The doctor must complete this form by answering all questions relating to the absence. Additionally it must be signed by the health care provider. If you accept a handwritten doctor's note, it must contain sufficient information and a statement as to the general nature of the incapacitation for you to determine if leave qualifies under the FMLA.

In cases where you question the validity or adequacy of the medical certification, you should contact Human Resources, Employee Benefits for guidance.

DISPUTES OVER FMLA DESIGNATIONS

Occasionally you and your employee might not agree on whether an absence should be considered FMLA and covered under this policy. The regulations require the employer and employee to work together to resolve any differences but if the leave qualifies as FMLA, it is the employer's obligation to designate it as such. Written documentation of any discussions and the decisions reached should be maintained. Please refer any questions you may have to the Human Resources, Employee Benefits at 464-4570.

CHANGES TO THE TIME SHEETS

When it is necessary to change your original "pending" FMLA designation and the initial pay period is past, you are required to reissue a corrected leave request form to the employee indicating the reason and revised designation. Payroll personnel may not make corrections to the time sheets without accompanying verification from the supervisor.

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FMLA AND SOME COMMON WORKPLACE SITUATIONS

1. Mary was out on STD for 6 weeks (May into June), after having unexpected emergency surgery. After returning to work, she had a relapse and wound up back in treatment from the end of July to the end of August. This time she did not receive STD as she had exhausted her benefits in her previous absence. Is any of this time FMLA?

Since she only has 6 weeks of STD to use, she must be in her first year as a permanent employee. Remember, if she is in her first year and had not worked previously for the county she will not be eligible for FMLA leave regardless of the reason for her absence. If the scenario was that Mary was not in her first year, her two leaves would use 10 weeks of her annual 12 week FMLA entitlement.

2. Ben and Sue have lived together for 6 years. Sue becomes seriously ill and Ben finds it necessary to stay home and care for her. He informs his supervisor that he would like to take the leave as FMLA.

Since Sue is not Ben's legal "spouse," the leave cannot be designated FMLA. Ben may be granted leave under the Annual Leave or the Extended Illness Leave rules.

3. John and Mary Smith have a baby in May 1996. John wants 2 weeks FMLA to be home with the baby for bonding immediately following the birth and 4 weeks in August.

John is requesting intermittent leave for bonding and the employer is not required to grant intermittent bonding leave. Assuming he does not use the balance of his entitlement for other FMLA leaves, he can take more at a later date. In fact, in the first four months of next year, John can even be allowed to take up to 12 weeks of FMLA leave for that year to stay home with the baby since FMLA allows bonding with a newborn anytime within one year of birth. Note: He must have his employer's permission if he wants to interrupt his 12 weeks and return to work intermittently. If John and Mary are both County employees, they are entitled to only 12 weeks between them for bonding with the newborn.

4. Julie begins her maternity leave on November 20 and applies for Short Term Disability (STD). Her baby is born December 6. Her STD benefits ended 7 weeks later, but she has requested leave to stay home to bond with the newborn for an additional 6 weeks.

Julie has twelve months from the birth of her baby during which she may stay home for bonding reasons under FMLA. However, she is still limited to 12 weeks of FMLA leave in any calendar year. In this example, her leave would be designated as FMLA for the time out on STD in January plus the 6 additional weeks to be with the baby.

5. Laurie, a FMLA eligible employee, is out Thursday and Friday with what she suspects is food poisoning. She called in each morning and left a message for her supervisor that she would be in the next day. She returns on Monday but leaves work in the middle of the day due to continued illness. She returns on Tuesday. She submits a leave request for 2 1/2 days of FA.

The supervisor should inquire if the leave might qualify as a "serious medical condition." Ask if she was ill over the weekend and whether she saw a doctor. If Laurie states she did not visit the doctor but only called him/her on the phone, this would not be a qualified illness. Additionally if she was not incapacitated for more than 3 consecutive days (which may include the weekend), she would not qualify.

6. Karl slipped and fell at work and was at home recuperating for 4 weeks which were designated as FMLA. The Workers' Comp doctor has released him to light duty but his supervisor tells him there is no light duty available. Karl is no longer receiving any workers' comp payment for lost wages. He has requested the additional time be considered FMLA.

Whether or not Workers' Compensation benefits are paid is not determinative of whether the leave would be considered FMLA. If Karl's condition meets the definition of serious health condition, and he is incapacitated, he may be entitled to the leave as FMLA.

NOTE: In the above scenario if the department had light duty available and Karl thought he was not physically ready to return to work, he could request the remainder of his FMLA entitlement. He could use any Extended Illness or Annual Leave in accordance with the County's FMLA policy.

7. William was out on Thursday and failed to call in. On Friday a family member called in to say that William was hospitalized for tests and would probably be absent for a week. William's department has a written policy requiring a "back to work" slip for all employees with medical absences in excess of 3 continuous days. The family member was told that William needed to bring in a "doctor's note" when he returned and if he would not be back as planned, he must notify management. By surprise, on Monday he returned to work. He did not have a doctor's note. He said, "Everything checked out OK, it was a false alarm." He said since he was only out 2 days and he used his accrued Extended Illness, he didn't think a doctor's note was needed. He said he did not want to use FMLA in case he needed it later. The supervisor told him to obtain a doctor's note and a release to return to work.

William does not have a choice whether to use FMLA. Management is required to designate FMLA if the leave qualifies. A hospital stay for even one night qualifies as FMLA leave. The leave request form should be marked as "FI": He did not need to bring a doctor's note since he was only absent 2 days and the policy does not, therefore, require it.

8. Ron has a broken right hand from a car accident in a county vehicle. From February through May he was out on Workers' Comp. In August his daughter was hospitalized for appendicitis and he requested FMLA leave to be with her. His supervisor denied the FMLA leave because he had already used his 12 weeks of FMLA entitlement. The employee stated that he had never asked for anything under FMLA so he didn't understand how he could have used it all.

The Workers' Comp leave should have been designated as FMLA from February through May and this should have been communicated to the employee. However, if it

was not, it is appropriate to go back and change the designation to FMLA after consultation with Employee Benefits. His request for FMLA leave in August must be denied as he has no more FMLA time in this calendar year.

9. Two of your employees, Ed and Anne, have each requested FMLA for scheduled appointments and occasional unscheduled absences due to "EAP" related reasons. Ed tells you his need is because of personal "stress." Anne says she has "problems" with her 8 year old son. She has seen two doctors and the school counselor and all have recommended therapy.

FMLA is NOT intended for absences due solely to stress, grief or relationship problems. For example, a major depression or anxiety that is treated with medication and counseling may qualify as a serious medical condition. Without further information provided by Ed indicating an underlying condition, he is not entitled to FMLA leave. He should be notified of this and then has an opportunity to elaborate on his request.

Anne's leave is more likely to be FMLA for her child's chronic condition, but you should advise her that she must provide a certification from the doctor establishing the child's serious health condition or need to care for the child.

10. What type of situation would be covered as Qualifying Exigency Leave under FMLA?

Kim's husband, Ted, has just been notified that he will be called to active duty within 3 weeks. Ted and Kim plan to make an appointment with an attorney so Ted can execute a Power of Attorney document for Kim prior to going on military duty. Also, their 3-year old Katy has been attending a day care center near Ted's place of employment. Now, Kim, a County employee, is going to select a new day care center closer to her County worksite. Kim will be requesting FMLA leave for these qualifying exigencies and if she is eligible and has not exhausted her FMLA entitlement for the calendar year, the time she needs for her appointments to take care of these matters will be approved as Qualifying Exigency Leave under FMLA. Certification of Qualifying Exigency and proof of active military service is required.

11. Can John request FMLA for servicemember leave and how much time can he take?

John has worked for the County for 15 months. His father who is in the U.S. Army Reserves was injured in the line of duty and has recently been moved from a military base hospital in Europe to complete his recovery in the U.S. He has been assigned to a military treatment facility as an outpatient and will require transportation and daily activities assistance from his son. His recovery period is expected to take six months. John will care for his father during his recovery and he has received a FMLA certification from his father's doctor confirming qualification as recovering from a serious injury in the line of duty while on active duty. John has used 40 hours of FMLA during this calendar year.

John meets the definition of family member and his father's condition has been certified as qualifying. However, John will not have the full 26 weeks of servicemember leave available. He has already used one week for his own FMLA condition and will be limited to up to 25 weeks of leave to care for his father. Certification of Servicemember leave and proof of active military service of the family member is required.