



<b>Policy 5.9</b>	<b>Family Medical Leave</b>		
<u>Effective Date:</u> 9/14/10  <u>Last Amended Date:</u> 2/28/12, 10/15/2020	<u>Applicable Law/Statute:</u> Pub.L. 103-3; 29 U.S.C. sec. 2601; 29 CFR 825	<u>Source Doc/Dept.:</u> None/HR	<u>Authorizing I.C. Sec:</u> None

## **FAMILY MEDICAL LEAVE**

**5.9**

### **POLICY**

It is the policy of DuPage County to comply with all Federal and State laws in granting Family Leave. This policy is meant to comply with the Family Medical Leave Act and is not intended to grant leave in addition to what the Act requires.

### **ELIGIBILITY**

- All full-time and part-time employees who have worked at least 1,250 hours during the twelve (12) months preceding the leave and who have completed twelve (12) months of service are eligible to take Family Medical Leave.

### **GUIDELINES**

- A.** An eligible employee will be entitled to a total of twelve (12) work weeks of unpaid leave during a designated twelve (12) month period for one or more of the following:
1. The birth and care of the newborn child of the employee. (Leave to care for a newborn child or for a newly placed child must conclude within twelve (12) months after the birth or placement).
  2. The placement of a child with the employee for adoption or foster care. (Leave to care for a newborn child or for a newly placed child must conclude within twelve (12) months after the birth or placement).
  3. To care for an immediate family member (spouse, child, or parent), of the employee with a serious health condition.
  4. When the employee is unable to work because of a serious health condition.
  5. Qualified Exigency Leave related to a spouse, child, or parent called to active duty in the National Guard or Reserves.

- B.** An eligible employee will be entitled to a total of twenty-six (26) work weeks of unpaid leave during a designated twelve (12) month period to care for an injured or ill military service member who is the employee's spouse, son or daughter, parent or "next of kin." The leave is applied on a per-service member, per-injury basis.
- C.** DuPage County uses a rolling twelve (12) month calendar to calculate an employee's Family Medical Leave, measured backward from the date leave is taken. Each time an employee requests Family Medical Leave, DuPage County will compute the amount of available time based upon the date of the employee's previous leave, if applicable.
- D.** In most circumstances, an employee may be required to use any accrued vacation, personal days, and sick time during any unpaid portion of Family Medical Leave granted, providing this does not interfere with Workers' Compensation benefits or eligibility for IMRF disability benefits. FMLA leave will run concurrently with any other applicable leave. For instance, IMRF disability or Workers' Compensation leave will be simultaneously designated as FMLA leave as well, if the leave is also FMLA qualifying.
- E.** The County will provide basic life, medical and dental insurance coverage to an employee who is on Family Medical Leave at the current employee rate. If an employee is off work after exhausting their twelve (12) weeks of Family Medical Leave, the employee will be responsible for the entire premium, from that point forward. If an employee fails to pay their share of the premium, coverage may be canceled.
- F.** Under certain circumstances, an employee may take Family Medical Leave intermittently, which means taking leave in blocks of time, or by reducing the employee's normal weekly or daily work schedule.
- G.** If Family Medical Leave is for birth and infant care, or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval. The County's approval is not required for intermittent leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.
- H.** When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment during non-working business hours so as not to unduly disrupt the operation of the department.
- I.** Spouses employed by the County may be limited to a combined total of twelve (12) weeks of Family Medical Leave for birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition. In the situation where the spouses have both used a portion of the total twelve (12) weeks of Family Medical Leave, for birth and care of a newborn child or for placement of a child for adoption or foster care, each would be entitled to the difference between the amount they have taken individually for other purposes.
- J.** An expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. Circumstances may require that FMLA leave begin before the actual date of birth of a child. An expectant mother may take FMLA leave before the birth of the child for

prenatal care or if her condition makes her unable to work. The mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health care provider during the absence, and even if the absence does not last for more than three (3) consecutive calendar days.

- K.** An employee is entitled to FMLA leave if needed to care for their pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for the spouse following the birth of a child if the spouse has a serious health condition.
- L.** Spouses employed by the County are entitled to FMLA leave if needed to care for a child, adopted child or foster child with a serious health condition if the requirements of the applicable FMLA regulations are met and provided they have not exhausted their entitlements during the applicable twelve (12) month FMLA leave period.
- M.** An employee who expects to be absent from work due to personal illness or injury for more than thirty (30) days may be eligible for IMRF disability benefits. (Personnel Policy 3C: Illinois Municipal Retirement Fund/IMRF)
- N.** An employee with twelve (12) or more months of service who is eligible for Family Medical Leave and is absent on Family Medical Leave for twelve (12) work weeks or less will have the right to return to the same, or equivalent, position. However, an employee has no greater right to reinstatement or other benefits and conditions of employment than if they had not taken leave. If the employee does not return to work on the first business day after the approved FMLA leave ends, the employee will forfeit their right to be reinstated under the FMLA.
- O.** Certain “key” employees (highly compensated salaried employees) may not be returned to their former or equivalent positions following a leave if reinstatement to employment will cause substantial economic injury to the County. The County will notify those who qualify as “key” employees and those who will be denied reinstatement, and it will also notify these employees of their rights.
- P.** Before returning to work, the employee must provide a written medical release from their physician before returning to work with a specific return date noting any restrictions. If restrictions are noted, the Department Head and Chief Human Resources Officer will determine whether and how the restrictions may be accommodated. If such certification is not received, their return to work will be delayed.
- Q.** Accrual of vacation and sick time will cease during any family medical leave of absence over thirty (30) days. In addition, employees will not be eligible to receive jury duty/ court services pay or blood donation leave pay at any time during FMLA leave, and will not be eligible to receive holiday pay or bereavement pay following thirty (30) days of an FMLA leave. Unpaid leave is defined as time off during which the employee is not receiving any compensation for previously accrued benefit sick time (sick, vacation, personal days, or compensatory time).

## PROCEDURES

1. An employee must contact human Resources to request Family Medical Leave, at least thirty (30) days in advance, where practical or where leave is foreseeable, stating both the purpose and the beginning and ending dates of the leave. If the need for leave is not foreseeable, or the employee does not receive thirty (30) days advance notice themselves, notice is required as soon as practicable, generally within one (1) to two (2) days of learning of the need for leave.
2. Requests for Family Medical Leave must be approved by the Chief Human Resources Officer, or designee.
3. The County will require that the employee obtain a Certification of Healthcare Provider form and have it completed by a certified health care provider. The employee is responsible for providing updated medical re-certifications as requested by the County during the Leave.
4. The Human Resources Department may contact the healthcare provider directly to authenticate a certification or obtain clarification.
5. An employee will be required to provide their supervisor with a schedule or a one (1) to two (2) day notice of anticipated absences.
6. If an employee fails to provide a one (1) to two (2) day notice or a call on the same day of an absence, it will not be counted as FMLA time unless the absence is due to unforeseen circumstances. Instead, it may be treated as a regular absence and will be subject to the department's attendance policy unless it was an emergency or unforeseen circumstance; then the employee must have a doctor/facility note to verify the emergency or unforeseen circumstance.
7. The County, at its expense, may require an examination by a second health care provider designated by the County. If the second medical opinion differs from the employee's original certification form, the County, at its expense, may require that a third, mutually agreeable health care provider provide a final and binding opinion.
8. The Human Resources Department will notify the employee of the status of their request for Family Medical Leave by sending the employee a Notice of Eligibility and Rights & Responsibilities form and Designation Notice form.
9. Employees may be required to provide periodic updates of their status and intent to return to work while on Family Medical Leave.
10. If an employee was on Family Medical Leave due to their own serious health condition, the employee must provide medical documentation from their treating health care provider indicating they are able to perform the essential functions of their position before returning to work. The medical documentation must include a list of restrictions that would impact their ability to perform the essential job functions of the position.

11. If circumstances of a leave change, enabling the employee to return to work earlier than the date specified, the employee should notify their supervisor at least two (2) working days prior to returning.
12. If a reduced work schedule or intermittent leave for planned medical treatment is approved, the employee may be temporarily transferred to an available alternate position for which the employee is qualified. All salary and benefits status will remain the same.
13. If an employee fails to return from leave for reasons other than the continuation, recurrence or onset of a serious health condition or other circumstances beyond the control of the employee, the County may recover the premium that was paid for maintaining group health plan coverage.
14. If an employee fails to return from leave, the employee's supervisor should notify the Human Resources Department immediately.
15. Consistent with the County's policy regarding all types of leave, the following conduct is strictly prohibited in relation to FMLA leave:
  - a. Engaging in fraud, misrepresentation or providing false information to the County or any health care provider.
  - b. Having other employment during the leave, without prior written approval from the County.
  - c. Failure to comply with the employee's obligations under this policy.
  - d. Failure to timely return from the leave.
16. Employees who engage in such conduct will be subject to loss of benefits, denial or termination of leave, and discipline, up to and including discharge.

## **EXCEPTIONS**

- An employee who is not eligible for Family Medical Leave may request a Personal Leave (Personal Policy 5.5: Personal Leave).



# EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

## LEAVE ENTITLEMENTS

Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within 1 year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;\* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

\*Special "hours of service" requirements apply to airline flight crew employees.

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.

## BENEFITS & PROTECTIONS

## ELIGIBILITY REQUIREMENTS

## REQUESTING LEAVE

## EMPLOYER RESPONSIBILITIES

## ENFORCEMENT

For additional information or to file a complaint:

**1-866-4-USWAGE**

(1-866-487-9243) TTY: 1-877-889-5627

**[www.dol.gov/whd](http://www.dol.gov/whd)**

U.S. Department of Labor | Wage and Hour Division

