

## **601 FMLA Leave**

Cook County. provides leave under the Family and Medical Leave Act of 1993 (“FMLA”) to eligible employees. Cook County. will comply with the FMLA (including all implementing regulations and Department of Labor Guidelines). This FMLA policy is intended to explain the FMLA, and the policies that Cook County. has adopted concerning same. This policy neither adds to nor subtracts from the rights and obligations under the FMLA.

### **TYPES OF LEAVE COVERED**

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

- 1) The birth of a child and in order to care for that child.
- 2) The placement of a child for adoption or foster care and to care for the newly placed child.
- 3) To care for a spouse, child or parent with a serious health condition.
- 4) The serious health condition of the employee that makes the employee unable to perform the functions of the employee's position.
- 5) Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member’s call-up or service. The qualifying exigency must be one of the following:

- a. short-notice deployment
- b. military events and activities
- c. child care and school activities
- d. financial and legal arrangements
- e. counseling
- f. rest and recuperation
- g. post-deployment activities, and
- h. additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of

the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

a) A “son or daughter of a covered servicemember” means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

b) A “parent of a covered servicemember” means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents “in law.”

c) Under the FMLA, a “spouse” means a husband or wife, including those in same-sex marriages, which were made legal in all 50 United States as of June 26, 2015.

d) The “next of kin of a covered servicemember” is the nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin. Alternatively, where a covered servicemember has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered servicemember's next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered servicemember pursuant to § 825.122(k).

“Covered active duty” means:

(a) “Covered active duty” for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country.

(b) (2) *Covered active duty or call to covered active duty status* in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation, in accordance with 29 CR 825.1

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee’s 12-week maximum of FMLA leave in a 12-month period. -

6) Military caregiver leave (also known as covered servicemember leave) to care for an injured or ill service member or veteran

An employee whose son, daughter, parent or next of kin is a covered servicemember may take up to 26 weeks in a single 12-month period to take care of leave to care for that servicemember.

Next of kin is defined as the closest blood relative of the injured or recovering servicemember.

The term “covered servicemember” means:

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

The term “serious injury or illness means:

(a) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and

(b) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered servicemember, means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating.

(c) Outpatient status, with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

### **SERIOUS MEDICAL CONDITION DEFINED**

A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider. Employees with questions about what illnesses are covered under this FMLA policy or under the company's sick leave policy are encouraged to consult with the Human Resource Manager .

### **AMOUNT OF LEAVE**

An eligible employee can take up to 12 weeks for the FMLA circumstances (1) through (5) above under this policy during the applicable 12-month period identified below.

If spouses both work for the company and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the spouses may only take a combined total of 12 weeks of leave. If spouses both work for the company and each wishes to take leave to care for a covered injured or ill servicemember, the spouses may only take a combined total of 26 weeks of leave

## **EMPLOYEE STATUS AND BENEFITS DURING LEAVE**

While an employee is on leave, Cook County. will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, Cook County will require the employee to reimburse the county the employer portion of the employee's health insurance premium paid by the county during the leave period.

Under current county policy, the employee pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received by the \_\_\_\_\_ day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. Cook County will provide 15 days' notification prior to the employee's loss of coverage.

Alternatively, Cook County. may recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the county maintains health coverage by paying the employee's share after the premium payment is missed.

If the employee contributes to a life insurance or disability plan, Cook County will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or Cook County may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If Cook County maintains coverage, the county may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work

## **PAID FMLA LEAVE**

Leave under the FMLA is generally unpaid. However, the county has made provisions for employees to receive pay during FMLA as explained below.

An employee taking FMLA leave for any of the qualifying reasons shall use in the order presented the following accrued paid leave concurrent with the FMLA leave: (1) compensatory time accrued under section 7(o) of the Fair Labor Standards Act ("FLSA"); and (2) personal paid leave. That portion of FMLA leave shall be referred herein as "the paid portion of FMLA leave."

If the employee exhausts his/her accrued compensatory time prior to the completion of FMLA leave, employee shall be required to use his/her accrued personal paid leave for the duration of the FMLA leave.

If employee exhausts his/her accrued compensatory sick leave prior to the completion of FMLA leave, employee shall be required to use his/her accrued vacation leave for the remainder of the FMLA leave.

If employee exhausts all accrued compensatory time and paid personal leave prior to the expiration of the FMLA leave, the remainder of the FMLA leave shall be unpaid.

The paid portion of FMLA leave shall count against the employee's FMLA leave entitlement and be deemed to run concurrently with FMLA

### **EXCEPTION TO USE OF ACCRUED LEAVE**

In certain FMLA qualifying situations, an employee will receive payment under workers compensation or a disability benefit plan while on FMLA leave ("disability portion of FMLA leave"). An employee is neither required nor permitted to use accrued compensatory time and/or paid personal leave during the disability portion of FMLA leave. Nonetheless, the disability portion of FMLA leave shall count against the employee's FMLA leave entitlement and be deemed to run concurrently with FMLA.

### **EMPLOYEE STATUS AND BENEFITS DURING LEAVE**

While an employee is on leave under the FMLA, the county will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the company will require the employee to reimburse the company the amount it paid for the employee's health insurance premium during the leave period.

Under current county policy, employees pay a portion of the health care premium. During any portion of paid FMLA leave, the county will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received by the county by the \_\_\_\_\_ day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

The county will provide 15 days' notification prior to the employee's loss of coverage.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid FMLA leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

### **INTERMITTENT LEAVE OR A REDUCED WORK SCHEDULE**

An employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill servicemember over a 12-month period).

The county may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

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.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the county before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

### **PROCEDURE FOR REQUESTING FMLA LEAVE**

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the HR Manager. Within five business days after the employee has provided this notice, the HR Manager will complete and provide the employee with the DOL Notice of Eligibility and Rights.

### **30 DAY NOTICE**

Employee must give the county at least 30 days advance notice of the need to take FMLA leave when employee knows about the need for the leave in advance and it is possible and practical to do so. When the employee has no reasonable excuse for not providing at least 30 days advance

notice, the county may delay the FMLA leave until 30 days after the date the tardy notice is provided.

If the employee could not have provided 30 days advance notice, the employee must give notice of the need for such leave as soon as possible and practical.

### **DESIGNATION OF FMLA LEAVE**

Within five business days after the employee has submitted the appropriate certification form, the HR Manager will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice.

### **INTENT TO RETURN TO WORK FROM FMLA LEAVE**

On a basis that does not discriminate against employees on FMLA leave and does not interfere with the employee's use of FMLA leave, Cook County may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

### **CERTIFICATION**

#### *EMPLOYEE'S OWN SERIOUS MEDICAL CONDITION*

Cook County requires employees who are seeking FMLA leave based on the employee's own serious medical condition to provide medical certification to support that type of FMLA leave request. To facilitate the provision of the required medical certification, employee will be provided Form WH-380-E.

#### *SERIOUS MEDICAL CONDITION OF FAMILY MEMBER*

Cook County requires employees who are seeking FMLA leave based on the serious medical condition of the employee's family member to provide medical certification to support that type of FMLA leave request. To facilitate the provision of the required medical certification, employee will be provided Form WH-380-F.

#### *QUALIFYING EXIGENCY FOR MILITARY FAMILY LEAVE*

Cook County requires employees who are seeking FMLA leave based on the qualifying exigency for military family leave. To facilitate the provision of the required certification, employee will be provided Form WH-384.

### *SERIOUS INJURY OR ILLNESS OF COVERED SERVICE MEMBER*

Cook County requires employees who are seeking FMLA leave based on the serious injury of illness of covered service member qualifying exigency for military family leave. To facilitate the provision of the required certification, employee will be provided Form WH-385.

### *RECERTIFICATION*

Cook County may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, or if the county receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the county may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence.

### **APPLICABLE 12 MONTH PERIOD**

For FMLA purposes (other than military caregiver leave), Cook County elects to use a rolling 12-month period measured backward. Each time employee requests leave, the county will compute the amount of FMLA leave employee has taken in the last 12 months and subtract it from the 12 weeks of available leave. The balance remaining is the amount of FMLA leave that the employee is entitled to take at that time.

This election to utilize the rolling 12 month period measured backward shall become effective sixty (60) days after the date on which the County Commission voted to approve these policies.

For military caregiver leave under the FMLA, the 12 month period begins on the first day the employee takes leave for this reason and ends 12 months later (rolling 12 month period measured forward). FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

### **FITNESS-FOR-DUTY CERTIFICATION**

All employees who have taken FMLA leave for their own serious medical condition shall be required to present a fitness-for-duty certification prior to returning to work. That requirement shall be communicated to employees on Form WH-382. The required fitness-for-duty certification shall address the employee's ability to perform the essential functions of the employee's job. At the same time that the county advises the employee that he/she is eligible for leave under the FMLA, the employee shall be provided with a copy of the the employee's job description that outlines the job's essential functions to facilitate the production of the required fitness-for-duty certification.

### **ACCRUAL OF BENEFITS WHILE ON LEAVE**

An employee's entitlement to benefits other than group health benefits during a period of FMLA is governed by the county's established policy for providing such benefits when the employee is on other forms of leave (paid or unpaid, as appropriate). Employees are directed to the county's accrual of benefits found at \_\_\_\_\_