



Loudoun County Government Administrative Policies and Procedures

Title: Family and Medical Leave Act Procedures	Effective Date: 1993
Number: HR-18	Date Last Reviewed/Revised: 09/10/2021
	Date of Next Review: 07/01/2026

I. Purpose:

The purpose of these procedures is to outline requirements and processes related to the County’s administration of the Family Medical Leave Act of 1993 (“FMLA”). FMLA provides job and benefits protection for eligible employees in need of leave for specific qualifying reasons.

II. Background:

FMLA requires covered employers to provide eligible employees up to 12 work weeks (26 work weeks for care of an injured service member) of unpaid, job and benefits protected leave in a specified 12-month period for a qualifying reason. Public agencies, including county and local governments, are considered covered employers under FMLA.

The qualifying reasons using leave under FMLA are:

- For the employee’s own serious health condition;
- For the birth of the employee’s child, and to care for the newborn child;
- For the placement of a child with the employee for adoption or foster care;
- To care for the employee’s spouse, child, or parent (but not in-law) who has a serious health condition; or
- Any qualifying exigency for an employee’s family member referenced above being on covered active duty, including but not limited to foreign deployment, in the armed forces; or
To care for an injured service member of an employee as defined above or designated as next of kin.

III. Related Policies and Laws:

Human Resources Handbook Sections 6.11 (Accrued Paid Leave), 6.12(F) (Family and Medical Leave), 6.12(J) (Paid Family Leave), and 6.13 (Leave Approval and Reporting);, Administrative Policies and Procedures HR-02 (Americans with Disabilities Act (ADA) Procedures), HR-40 (Donated Leave), HR-44 (Workers’ Compensation) and HR-48 (Paid Family Leave); Family and Medical Leave Act of 1993 (29 U.S.C. §§ 2601 et. seq.; 29 CFR §§ 825 et. seq.).

IV. **Eligibility:**

In order to qualify for FMLA leave under this policy, the employee must meet all of the following conditions:

- A. Have worked for Loudoun County for at least 12 months. The twelve months need not be consecutive. For the purposes of determining 12 months of employment, the prior seven years will be considered.
- B. Have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence.
- C. Have a physical work location within a radius of 75 miles to the employee's designated County worksite.

Loudoun County reserves the right to deny requests for FMLA leave where such a denial would be appropriate and authorized under Federal law and any applicable State law.

V. **Definitions:**

A. Family Member - Spouse, Child and Parent – "Spouse" is defined as the employee's legal spouse under Virginia law. "Child" means biological, adopted, or foster child, a stepchild, legal ward or in a case where the employee is providing day to day care or financial support for the child. The child must be either under 18 years of age, or older than 18 and incapable of self-care because of a mental or physical disability. "Parent" is defined as biological parent or a non-biological parent who had primary responsibility for raising the employee. This term does not include parents "in law" or grandparents.

B. Healthcare Provider - Includes a doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by X ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law, or Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts (the County may require a second opinion). Treatment by a chiropractor or plastic surgeon may require additional certification by the FMLA Administrator.

For purposes of Military Caregiver Leave, health care provider is defined as a United States Department of Defense ("DOD") Health Care Provider or a Health Care Provider who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD Tricare network authorized private health care provider; or (3) a DOD non-network Tricare authorized private healthcare provider.

C. Intermittent Leave - Medical leave taken in separate blocks of time due to a single qualifying serious health condition and may include periods from fifteen minute increments to several weeks at a time. The total amount of leave may not exceed the equivalent of twelve work weeks in a 12-month period.

D. Medical Certification Form - The treating healthcare provider must complete and sign a *Medical Certification Form* as to the need for medical leave. This form is

required for all leave requests other than birth of a child, adoption or placement for foster care of a child.

- E. Recertification** - An employee may be required to recertify the medical need for the leave at any reasonable interval if, (1) circumstances described by the original certification have changed significantly, or (2) information is received that casts doubt on the need for the leave; but not more often than every 30 days if the employee requests an extension of leave. Periodic updates may be requested as deemed appropriate if leave is for pregnancy, a chronic or permanent/long-term condition.
- F. Reduced Leave Schedule** - A schedule that reduces the number of work hours per day to a number less than the employee's authorized work schedule.
- G. Serious Health Condition** - A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of his/her job or prevents the qualified family member from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy or a chronic condition. Other conditions may meet the definition of continuing treatment.

VI. Use of Leave

- A. FMLA may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave. An employee has the flexibility to designate the leave type they would like to use in accordance with Chapter 6 of the HR Handbook.
- B. Intermittent leave for the birth of a child (including bonding time), adoption or placement of a child in foster care must be taken within one year of the birth or placement of the child. Leave may only be taken on a consistently applied schedule, consisting of continuous leave in segments of one week or more (no more than three segments of time) to minimize disruptions to County operations.
- C. For foreseeable and/or elective medical treatment, the employee must consult with his/her Supervisor, Department Director, and/or HR Liaison prior to scheduling the appointment in order to arrange a time that best suits the needs of both employee and the department.
- D. Spouses Both Work for County** - If both the employee and his/her spouse work for the County, both may only take a combined total of 12 work weeks in any 12-month period for the birth of a child (parental bonding time), adoption or placement of a child in foster care, or to care for a parent (but not parent "in-law"). For Military Family Leave, the spouses may only take a combined total of 26 work weeks of leave.
- E. Attending Classes or Court Appearances** - While on leave, an employee may be

permitted to attend classes or court appearances related to his/her job when the leave is not for the employee's own serious health condition and/or the employee's medical provider provides a medical release for the employee to attend.

- F. If an employee requests intermittent and/or reduced schedule leave, including recovery from a serious health condition, the employee may be temporarily transferred by the County Administrator in coordination with the employee's Department Director to an alternate vacant position which better accommodates the employee's recurring periods of leave. The alternate position must be one for which the employee is qualified. The employee will maintain the same rate of pay and benefits eligibility. The temporary transfer can be to a job on the same shift/schedule or a different shift/schedule. When the leave ends, the employee may be returned to his/her regular position.

VII. FMLA Administration

The County utilizes a third-party administrator to review, approve, process and track FMLA leave requests for eligible County employees. The third-party administrator will determine if the employee is eligible for FMLA, send notifications to employees and employer contacts (department HR Liaisons), notify employees of their rights and responsibilities, collect medical certification forms and supporting documentation, track entitlement and usage, prompt employees to provide updates and information regarding their absence, and provide departmental weekly report with leave updates to employer contacts.

A. Reporting - The third-party administrator will provide email notification to the department's designated HR Liaison email address and the Department of Human Resources / Benefits when:

1. The employee initiates a request for Family and Medical Leave,
2. Upon approval/denial of leave, and
3. The employee's return to work status.

Department HR Liaisons are provided access by the third-party administrator to leave reports and individual leave reports may be made available by the Department of Human Resources upon request.

B. Department Responsibilities – Each department is responsible for tracking leave internally and reconciling timecards bi-weekly with reporting provided by the third-party administrator.

1. The department Payroll Liaison and/or HR Liaison will designate the type of leave to be used in coordination with the employee. If the employee has not designated the type of leave to be used, it is the department's Payroll Liaison and/or HR Liaison's responsibility to so designate. In the event of a discrepancy, the County's FMLA Coordinator should be contacted for assistance.
2. Both paid and unpaid leave run concurrently with FMLA. Leave type usage must be in accordance with *Chapter 6 of the HR Handbook*.

3. If an employee is absent three or more work days or the department becomes aware of a qualifying FMLA absence and there is no record of an initiated leave request, the department's HR Liaison shall make a timely notification to the County's FMLA Coordinator by email at hr-fmla@loudoun.gov or by phone at 703-777-0517. If enough information is available to determine if the leave is FMLA qualifying, the County's FMLA Coordinator will initiate a FMLA request with the third-party administrator on behalf of the employee.
4. **Workers' Compensation** - in the event of a work-related incident resulting in a leave of absence of a minimum of three workdays, the employee and/or supervisor must immediately notify HR/Benefits/Risk Management in accordance with Administrative Policies and Procedures HR-44. If the employee is unable to initiate a FMLA request, one will be initiated on the employee's behalf by HR staff. The employee must coordinate his/her return-to-work through his/her department and Risk Management. If the employee's work accident is compensable under Virginia law and is eligible for FMLA, the leave will be designated without additional medical certification.
5. In the event of a discrepancy, contact the County's FMLA Coordinator for assistance. The department must consult with the Department of Human Resources/Employee Relations Division prior to issuing discipline for an employee with a pending or approved FMLA request.

C. Leave Request Procedures

The employee must communicate the need for leave to his/her Supervisor, Department Director, or HR Liaison. The notice may be verbal or written.

1. The employee's Supervisor, Department Director, or HR Liaison will promptly provide the employee with an informational brochure, "*Reporting a Family and Medical Leave*," and direct him/her to contact the third-party administrator to initiate the leave request.
2. The employee must initiate the leave request at least thirty calendar days in advance when he/she knows about the need for the leave in advance and it is possible and practical to do so.
 - a. If thirty calendar days advance notice is not possible because the situation has changed or the employee does not know exactly when leave will be required, the employee must provide notice of the need for leave as soon as possible and practical.
 - b. When the employee has no reasonable excuse for not providing at least thirty days advance notice, the start date of the requested leave may be delayed until thirty days after the date notice has been provided or by the amount of time the employee delayed making the notification.

3. Process for Initiating a Leave Request

- a. The employee should contact the County's third-party administrator to initiate FMLA leave. The contact information can be found on the County's Employee Intranet.
- b. The employee will need to provide the third-party administrator with the following information:
 - i. Employed by the County of Loudoun, VA
 - ii. First and last name
 - iii. Employee ID #
 - iv. Reason for the leave request
 - o If caring for an immediate family member, his/her name, relationship to the employee and their date of birth (if it is for a child).
 - v. Leave request start date
 - vi. Estimated return to work date
 - vii. If going on leave due to a medical condition, provide the name, telephone number and fax of the attending physician.
- c. After requesting the leave, the employee will receive and should review the *Leave Notification Packet*, which includes *Employee Rights and Responsibilities*, details of the leave request and the *Medical Certification Form*. With employee authorization, the third-party administrator may fax the Medical Certification Form directly to the treating healthcare provider.
 - i. The employee should return the completed *Medical Certification Form* within fifteen days of the due date indicated on the form or provide a reasonable explanation for the delay. The third-party administrator will send one reminder email to the employee if the appropriate forms/information has not been provided. Failure to provide the *Medical Certification Form* may result in a denial of leave.
 - ii. If the *Medical Certification Form* is incomplete or insufficient to support the leave request, the employee will have seven calendar days to provide an acceptable *Medical Certification Form*. The leave is not protected under FMLA until the required *Medical Certification Form* is received, reviewed for eligibility and designated.
- d. The third-party administrator will notify the employee regarding whether or not the leave qualifies for FMLA. This notification will also be sent to the Department of Human Resources and the employee's department HR Liaison.
 - i. If the leave is approved, the employee is responsible for accurately reporting absences associated with the condition to the third-party administrator and on his/her County timecard.
 - ii. If there are questions regarding a pending request and what information is required to certify the leave, the employee should contact the County's third-party administrator.

- iii. If the leave is denied, the employee should contact his/her department HR Liaison to determine if other leave options may be available.
- iv. If the denial of FMLA is disputed, the employee may initiate an appeal request through the third-party administrator.

4. Reporting an Absence

- a. The employee must first report the absence in accordance with his/her department's established protocol; and
- b. The employee must also report his/her absence to the third-party administrator in advance or within forty-eight hours of time used, when feasible.

5. Intermittent Leave

Recertification may be requested as appropriate in cases where leave use is outside of absences stated on the medical certification.

6. Returning to Work

- a. The employee must first notify his/her department of his/her intent to return to work in accordance with his/her department's established protocol; and
- b. The employee must also notify the third-party administrator of his/her intent to return to work.
- c. The employee must provide a copy of the *Return-to-Work Authorization* to the employee's Supervisor and department HR Liaison. The HR Liaison must provide a copy to Human Resources/Benefits. Failure to provide the *Return-to-Work Authorization* may delay the employee's return to work.
 - i. For certain safety-sensitive positions, a return-to-work medical authorization is required from the employee's health care provider to certify that the employee serving in such a position, after review of the job description, is able to perform the essential functions of his/her safety-sensitive position. The Department of Human Resources maintains a list of positions designated as safety-sensitive and therefore subject to this requirement.
 - ii. If limitations are placed on the return-to-work authorization by the employee's health care provider, these limitations must be clearly stated.
- d. If the employee is returning back to work earlier than the end date of the approved leave, has been released to return to work with restrictions, or is unable to return to work after the end date of the approved leave, the employee is required to notify his/her department HR Liaison and the third-party administrator at least two business days prior to his/her expected date of return.

- i. If the employee has been released to return to work with restrictions, or is unable to return to work:
 - A. The third-party administrator will notify the County's FMLA Coordinator in Human Resources/Benefits.
 - B. The FMLA Coordinator will inform Employee Relations.
 - C. Employee Relations will contact the Department Director and HR Liaison regarding the employee's to return to work and the department's ability to accommodate the temporary restrictions.
 - 1. If the employee is approved to return to work with temporary restrictions, he/she will be notified of the return-to-work plan.
 - 2. If the employee is not approved to return to work with temporary restrictions, the County's FMLA Coordinator will determine if additional FMLA leave is available. If additional FMLA leave is not available, Employee Relations will evaluate the case to determine if accommodations would be appropriate under the *Americans with Disabilities Act (ADA)*.
- e. The third-party administrator will contact the employee as he/she nears the end of his/her approved leave.
 - i. Approximately two weeks before the employee's return to work, the third-party administrator will send a reminder email and instructions about the return-to-work process.
 - ii. If the employee has not responded to the initial reminder, one week before the employee's return to work date, the third-party administrator will again reach out to the employee.
 - iii. The third-party administrator will provide reporting to the employee's department regarding leave extensions, confirmed return to work statuses and pending status for employees who have not responded.

Responsible Department/Division: Department of Human Resources / Benefits

This policy remains in effect until revised or rescinded.