

PROCEDURE 506-4

FAMILY AND MEDICAL LEAVE ACT

Effective 01-01-2020, Resolution No. 044-19; Revised 05-01-2021, Resolution No. 014-21

The Family and Medical Leave Act (FMLA) provides eligible employees with a job-protected, unpaid leave of absence for qualifying events. This procedure sets forth Johnson County Government's practices for complying with the FMLA. This procedure is not intended to expand or diminish any employee's rights under the FMLA or the County's responsibilities. The County will comply with all applicable requirements of the FMLA and related regulations regardless of their inclusion in this procedure.

Eligible Employees

Employees are eligible for FMLA leave if they have worked for the County 12 months (time does not have to be consecutive, but where there has been a break in employment of more than seven years, the time prior to the break will not be counted), and have worked for the County for at least 1,250 hours in the 12 months immediately preceding the date leave is to begin.

Basic FMLA Leave Entitlements

Eligible employees may take up to 12 workweeks of leave during a 12-month period for the following qualifying events. The 12-month period is a rolling period measured backward from the date the employee begins to use FMLA leave. Leave for part-time and variable schedule employees will be provided on a pro-rated basis. Employees absent for military duty will be credited those hours as required by federal law.

Parental Bonding. FMLA leave may be taken to care for the employee's child upon birth or in connection with a child's placement with the employee for adoption or foster care. The leave must conclude within 12 months of the birth or placement. Spouses who are both employed by the County are entitled to a combined leave of 12 workweeks in the 12-month period. Each spouse is not entitled to 12 weeks. Subject to County approval, the leave may be taken intermittently or on a reduced work schedule.

Serious Health Condition of Employee or a Covered Family Member. FMLA leave may be taken when the employee is unable to work because of the employee's own serious health condition. It may also be taken to care for a parent, spouse, or child with a serious health condition. Spouses employed by the County are entitled to a combined leave of 12 workweeks in the 12-month period to care for a parent who has a serious health condition. However, each spouse may take up to 12 workweeks of leave to care for a child or spouse with a serious health condition.

The term "child" means a biological, adopted, foster child, stepchild, legal ward, or a child of a person standing *in loco parentis* (provides day to day care or financial support) who is under 18 years of age or who is 18 years of age or older and is incapable of self-care due to a physical or mental disability. The term "parent" includes stepparents, foster parents, and persons who stood *in loco parentis* to the employee when the employee was a child, but does not include in-laws.

A "serious health condition" includes:

- Conditions requiring an overnight stay at a hospital or health care facility.
- Conditions that result in a period of incapacity (for example, inability to work, attend school, or perform self-care activities) of more than three consecutive calendar days that requires ongoing

medical treatment (either more than one appointment with a healthcare provider within 30 days or at least one appointment with a healthcare provider that results in continuing treatment, such as prescription medication, under the supervision of a healthcare provider.

- Prenatal care, incapacity due to pregnancy including morning sickness and medically-required bedrest, and the mother's serious health condition following birth.
- Chronic conditions that involve occasional periods of incapacity and require at least two visits per year to a healthcare provider.
- Permanent or long-term conditions for which treatment may not be effective, if the employee is under the supervision of a health care provider (but not necessarily receiving active treatment).
- Any absences to receive multiple treatments for restorative surgery after an accident or injury or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days if not treated.

Qualifying Need Related to Military Service of a Covered Family Member. FMLA leave may be taken because of any qualifying need arising out of the fact that an employee's child, spouse, or parent is on active duty in a foreign country or has been notified of impending active duty in a foreign country. Qualifying needs include addressing needs related to short-notice deployment, attending certain military events, arranging for or providing childcare and school activities, making certain financial and legal arrangements, attending counseling, spending time with a covered service member who is on a short-term leave, attending post-deployment briefings and activities sponsored or required by the Armed Forces, and similar types of activities proposed by the employee and approved by the Director of Human Resources. The FMLA regulations refer to these qualifying needs as "exigencies."

Servicemember Family Leave

An eligible employee who is the parent, spouse, child, or next of kin of a covered servicemember is entitled to up to 26 workweeks of leave during a single 12-month period to care for a covered servicemember who has a serious illness or injury incurred or aggravated in the line of duty while on active duty in the Armed Forces, including the National Guard and Reserves, where the illness or injury may render the member medically unfit to perform the duties of their office, grade, rank, or rating. A covered servicemember includes veterans, provided that the veteran was a member of the Armed Forces within five years of requiring care.

The 26 weeks is inclusive of all forms of FMLA and servicemember family leave that the employee takes during the 12-month period, which is measured forward from the date an employee begins to use leave to care for a covered servicemember. The servicemember family leave is available only in the single 12-month period that it is initially used. If an employee does not take all 26 weeks of servicemember family leave during that period, the balance is forfeited. An employee may be eligible for a new period of servicemember family leave in a subsequent 12-month period to care for a different covered servicemember or the same servicemember if he/she incurs a different serious injury or illness.

Spouses who are both employed by the County and eligible for FMLA leave are jointly entitled to a combined servicemember family leave of twenty-six (26) workweeks in a single 12-month period.

The term "next of kin" means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter.

Designating Leave

Employees are not required to use specific words to request FMLA leave. When an employee requests FMLA leave or when the employee's supervisor has cause to believe that the employee's leave may be for an FMLA-qualifying event, including an employee's unplanned absence of more than three consecutive days, the supervisor must notify the payroll representative who will immediately complete the Leave Request Form. The form must be completed regardless of the supervisor or payroll representative's knowledge of the employee's ineligibility for FMLA.

The Department of Human Resources will determine whether the employee is eligible for FMLA leave and will notify the employee in writing of their eligibility or ineligibility within five business days unless the employee has received an eligibility notice within the prior 12 months and the eligibility status has not changed. The eligibility notice will include information about the employee's rights and responsibilities.

If the employee is eligible for FMLA leave, the Department of Human Resources will request the necessary documentation to support the leave request, which may include medical certification, military orders, or documentation of family relationship depending upon the reason for the leave.

Within five days of receiving sufficient information to determine whether the reason for the leave is a qualifying event for FMLA purposes, the Department of Human Resources will notify the employee whether the leave has been designated as FMLA leave. An employee may be retroactively placed on FMLA leave after leave has begun if the reason for the leave is determined to be an FMLA qualifying event.

The time periods described in this section may be extended under extenuating circumstances.

Notice and Scheduling Leave

Where the need for leave is foreseeable, the employee must provide at least 30 days' notice of the anticipated date the leave is to begin where possible. Where it is not possible to provide 30 days' notice, the employee must provide notice as early as possible. If an employee fails to give 30 days' notice for foreseeable leave with no reasonable excuse, the County may deny leave until 30 days after the employee provides notice.

When medically appropriate, employees using FMLA leave on an intermittent or reduced schedule basis must attempt to schedule their leave without unduly disrupting the County's operations. When possible, employees are expected to consult with their supervisor before scheduling medical appointments.

Unless on an approved, continuous leave of absence, employees must follow their department/agency/office procedure for reporting absence or tardiness each time they are absent or tardy for an FMLA-qualifying reason. Where there is no such procedure, employees must notify the department/agency/office within 30 minutes of their scheduled starting time. Once FMLA leave has been approved, the employee must report that the absence is for FMLA or state the specific FMLA qualifying reason when reporting an absence. Where the employee fails to provide this information, the absence may not be counted as protected FMLA leave. Simply calling in sick is not sufficient.

Medical Certification

All medical certification will be requested and maintained by the Department of Human Resources, not the employee's department/agency/office. Under no circumstances will any other department, agency,

or office contact the employee's healthcare provider except for those agencies and offices that manage their own FMLA. The employee's supervisor may never contact the employee's health care provider.

Initial. Employees requesting leave because of their own or a covered family member's serious health condition or to care for a covered servicemember must provide medical certification supporting the need for leave, the duration of leave, and the nature of the leave (continuous, intermittent, or reduced schedule). In most cases, the certification must be provided on the County form provided by the Department of Human Resources. The County may require a second or opinion at the County's expense. It may also require a third opinion, again at County expenses, where legally permissible. Pregnant employees will not be required to provide medical certification for prenatal visits or occasional, brief periods of incapacity.

Recertification. Normally, a single certification will be adequate for the entire duration of the leave supported by the certification, including intermittent leave. However, the County may require recertification during the period of leave for chronic or permanent/long-term conditions and pregnancy or under any of the following circumstances:

- The employee requests an extension of leave.
- Circumstances described by the original certification have changed significantly.
- The County has reason to doubt the continuing validity of the original certification.

Absent extenuating circumstances, medical certifications are due within 15 days of the request for certification.

Return to Work. Employees on continuous leave for their own serious health condition or following the birth are required to provide a medical release as a condition for returning to work. Employees will not be reinstated until the release has been submitted.

Costs. Other than second and third opinions requested by the County, the employee is responsible for the costs associated with providing medical certifications and releases.

Concurrent Use of Paid Leave

FMLA leave is unpaid. However, employees are required to use available compensatory time and paid leave including vacation, sick leave, caregiver leave and/or parental leave where applicable, shared leave, and personal holidays, concurrently with FMLA leave. When employees exhaust their paid leave time, any remaining FMLA leave will be unpaid. Sick disability pay runs concurrent with FMLA; however, employees receiving sick disability pay are not required to exhaust other paid leave.

FMLA leave, whether a part of the employee's 12-week or, when applicable, 26-week FMLA entitlement, will run concurrently with any leave taken under Workers' Compensation or other injury benefits programs when the injury is one that meets the definition of a serious health condition.

FMLA usage, whether paid or unpaid, will be recorded in ¼ hour increments for both exempt and non-exempt employees. Where an employee uses paid leave concurrent with FMLA leave, leave balances will still be debited in ¼ hour increments for non-exempt employees and in half-day or full-day increments for exempt employees. As a result, exempt employees may have FMLA leave recorded without having paid

leave balances debited. The employee, supervisor, and payroll representative are responsible for ensuring that FMLA leave is recorded accurately and that leave balances are debited properly.

Maintenance of Benefits

While on FMLA leave, employees will retain all benefits in which they are enrolled through the County's Flexible Benefits Program including medical, dental, vision, and supplemental life insurance provided that the employee portion of such coverage is paid in a timely manner. If the employee is receiving pay while on leave, employee contributions will be deducted as if the employee had continued to work. If the employee is not receiving pay, the employee must make payment arrangements with the Benefits Division of the Department of Financial Management & Administration (FMA-Benefits). Payment that is more than 30 days late is considered a failure to pay. Canceled insurance coverage will be reinstated upon the employee's request when the employee returns to work on the same terms as prior to cancellation and without any qualifying or exclusionary period.

Except as required by the Public Health Act and the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA), the County's obligation to maintain health benefits under FMLA ceases when the employee informs the County of their intent not to return to work or if the employee does not return from leave.

If an employee does not return to work after the period of FMLA leave expires, the employee may be required to reimburse the County for the County's share of the medical, dental, and vision coverage contribution during any period of unpaid leave, unless the reason the employee does not return to work is the continuation, onset, or recurrence of a serious health condition in the employee, or covered family member, or otherwise beyond the control of the employee.

An employee on FMLA may have an opportunity to continue participation in the Medical, Limited Medical, and Dependent Care Reimbursement Programs. Opportunities vary based on whether the leave is paid or unpaid. Employees should contact FMA-Benefits for more information.

Employees will not accrue vacation or sick leave hours while on unpaid FMLA leave.

Job Restoration

At the end of FMLA leave, the employee will be reinstated to the job the employee left or to a job with the same or equivalent pay, benefits, and other terms and conditions of employment unless:

- The employee failed to submit the required medical release; or
- The employee is unable to perform the essential functions of the position either with or without a reasonable accommodation because of a physical or mental health condition, including continuation of the same condition for which the employee sought leave; or
- The employee is separated from employment for a reason unrelated to the employee's FMLA use such as a reduction in force, misconduct, or expired work authorization.

In the first two events, the Department of Human Resources will evaluate whether additional FMLA leave is available and needed or whether accommodation may be required under the Americans with Disabilities Act.

Where reinstatement of a key employee would cause substantial and grievous economic injury to the County, the County may choose not to reinstate the employee. A key employee is a salaried employee who is among the highest paid 10% of County employees.

Outside Employment

Employees using caregiver leave, parental leave, sick leave, or shared leave concurrent with FMLA leave may not engage in employment for another employer or engage in self-employment activities during hours in which the employee otherwise would have been working for the County.

Prohibited Acts

The County will not consider the request for or use of FMLA leave as a negative factor in any employment action or in assessing an employee's attendance. It is a violation of this procedure and the FMLA for any employee or official to interfere with, restrain, or deny the exercise of any right provided by this procedure or to discharge, discriminate against, harass, or retaliate against any individual for exercising his/her rights under or opposing any practice in violation of the FMLA. Employees should report such action to their supervisor, manager, or department/agency/office head; any employee in the Department of Human Resources; or the County Manager, Deputy County Manager, or an Assistant County Manager.

See Also: Department of Labor FMLA Employee Rights Guide: attached and at <https://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>
Department of Labor Employee's Guide to FMLA: <https://www.dol.gov/whd/fmla/employeeeguide.pdf>