



LIVINGSTON COUNTY FAMILY AND MEDICAL LEAVE POLICY

1. **Statement of Policy.** Livingston County will grant and designate leaves of absence to eligible employees in accordance with the Family and Medical Leave Act of 1993 ("FMLA"). This policy is intended to summarize employees' rights under the FMLA. To the extent any provisions of this Policy are inconsistent with the FMLA, the provisions of the FMLA and its regulations shall apply.
2. **FMLA Leaves.** Eligible employees are entitled to:
 - a. **Twelve weeks of leave.** Up to twelve workweeks of unpaid leave per twelve-month period, except in cases of leave to care for a covered military service member with a serious injury or illness in which case an eligible employee is entitled to up to twenty-six weeks of unpaid leave, depending upon other FMLA leave usage, in a single twelve-month period;
 - b. **Restoration to position.** Restoration to the employee's position or an equivalent position at the end of the FMLA leave;
 - c. **No loss of employment benefits.** No loss of employment benefits which were accrued prior to the leave except those which are used by the employee during the leave;
 - d. **Restoration of seniority.** Restoration to seniority held prior to leave (seniority will not accrue during an unpaid leave); and
 - e. **Maintenance of health insurance.** Health insurance benefits will be maintained for the duration of the FMLA leave at the level and under the conditions coverage would have been provided if the employee had continued to work, except that coverage may be terminated if the employee fails to make required contributions toward premium costs for a period exceeding 30 days.
3. **Eligibility.** An employee is eligible for a FMLA leave if:
 - a. **12 months of employment.** The employee has been employed by the County for at least twelve months¹; and
 - b. **1,250 hours worked.** The employee has worked at least 1,250 hours during the twelve month period immediately preceding the date of the requested leave; and

¹ The 12 months an employee must have been employed need not be consecutive months.

- c. **Qualifying event.** There is a "qualifying event"; and
- d. **Not highly compensated.** The employee is not a highly compensated employee whose leave would cause substantial and grievous economic injury to the County; and
- e. **Not already used FMLA entitlement.** The employee has not used all of the FMLA leave to which the employee is entitled. If the employee has used only a portion of their FMLA leave entitlement, the employee may use the remaining portion provided the employee is otherwise eligible.

4. **Qualifying Events.** The following are qualifying events:

- a. **Employee's serious health condition.** The employee is suffering from a serious health condition that makes the employee unable to perform the functions of the employee's job;
- b. **Spouse, child or parent serious health condition.** The employee's spouse, son, daughter or parent of the employee is suffering from a serious health condition and the employee is needed to provide care to that person;
- c. **Birth or placement of child.** The birth or placement of a son or daughter with an employee; however, leaves requested for this reason must be taken within twelve months of the birth or placement of the son or daughter with the employee;
- d. **Qualifying exigency related to military duty.** Any "qualifying exigency" arising out of the fact that the spouse, son, daughter or parent of the employee is on covered active duty, or has been notified of an impending call to covered active duty status: (1) during deployment of the service member with the Armed Forces to a foreign country, or (2) for a service member in a reserve component of the Armed Forces, during deployment to a foreign country under a call or order to active duty in support of a contingency operation. Leave may be taken for one or more of the following purposes:
 - i. **Short Notice Deployment:** to address any issue that arises from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven or less calendar days prior to the date of deployment;
 - ii. **Military events and related activities:** (a) to attend any official ceremony, program, or event sponsored by the military, and/or (b) to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross;
 - iii. **Childcare and school activities:** (a) to arrange for alternative childcare, (b) to provide childcare on an urgent, immediate need basis, (c) to enroll in or transfer to a new school or day care facility, and/or (d) to attend meetings with staff at a school or a day care facility, such as meetings with school officials regarding

- disciplinary measures, parent-teacher conferences, or meetings with school counselors;
- iv. Financial and legal arrangements: (a) to make or update financial or legal arrangements to address the covered military member's absence, and/or (b) to act as the covered military member's representative before a federal, state or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on active duty or call to active duty status, and for a period of 90 days following the termination of the covered military member's active duty status;
 - v. Counseling: to attend counseling provided by someone other than a health care provider for oneself, for the covered military member or for the child of the military member if the need for counseling arises from the active duty or call to active duty status of a covered military member;
 - vi. Rest and recuperation: up to five days to spend time with a covered military member who is on short-term temporary, rest and recuperation leave;
 - vii. Post-deployment activities: (a) to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and/or (b) to address issues that arise from the death of a covered military member while on active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements; or
 - viii. Additional activities: to address other events which arise out of the covered military member's active duty or call to active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave; or
- e. **Care for military service member with serious health condition.** The employee is the spouse, son, daughter, parent or next of kin of a covered service member who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness if the covered service member is/was a member of the Armed Forces at any time during the period of five years preceding the date on which the member undergoes that medical treatment, recuperation, or therapy.

Definitions:

“Son or daughter” (items b & c). For purposes of items b and c of this section, a "son or daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability.

“Son or daughter” (items d & e). For purposes of items d and e of this section, a “son or daughter” means a biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis.

“Next of kin.” “Next of kin” means the nearest blood relative other than the covered service member’s spouse, parent, son or daughter, in the following priority: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

“Serious health condition” (items a & b). A “serious health condition” for purposes of all leaves other than those described under 4(e) of this policy is an illness, injury or physical or mental condition that involves:

1. **Inpatient care** involving an overnight stay in a hospital, hospice or residential medical care facility, including any period of incapacity; or
2. **Continuing treatment** by a health care provider.

“Continuing treatment” means a serious health condition involving continuing treatment by a health care provider including any one or more of the following:

- Incapacity and treatment.
 - Treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist², by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under order of, or on referral by, a health care provider; or
 - Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.
- Pregnancy or prenatal care. Any period of incapacity due to pregnancy or for prenatal care.
- Chronic conditions. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;
 - Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - May cause episodic rather than a continuing period of incapacity.
- Permanent or long-term conditions. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

² “Extenuating circumstances” means circumstances beyond the employee’s control that prevent the follow-up visit from occurring as planned by the health care provider within the 30-day period.

- Conditions requiring multiple treatments. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders or, or on referral by, a health care provider for:
 - Restorative surgery after an accident or other injury; or
 - A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment.

A "*health care provider*" is: a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices or any other person determined by the Secretary of Labor to be capable of providing health care services³.

"Serious health condition" (item e). A "serious health condition" for purposes of leaves described in 4(e) of this policy means an injury or illness incurred by a covered service member in the 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 service member medically unfit to perform the duties of the service member's office, grade, rank or rating. For a veteran, a serious injury or illness is defined as a qualifying injury or illness that was incurred by the member in the 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 manifested itself before or after the member became a veteran.

5. **Intermittent and Reduced Schedule Leaves.** Intermittent and reduced schedule leaves must be granted if:
- a. The leave is being taken due to an event specified in paragraph 4(a), (b) or (e) of this policy, and an intermittent or reduced schedule leave is medically necessary; or
 - b. The leave is taken due to an event specified in paragraph 4(d).

Other instances. Intermittent and reduced schedule leaves may be granted in other instances if both the employee and the County agree.

³ Others "capable of providing health care services" include only:

- (1) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined by State law;
- (2) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law;
- (3) Christian Science Practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
- (4) Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and
- (5) A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of the provider's practice as defined under such law.

Scheduling leave for medical treatment. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations.

Transfer of employee during leave. If an employee takes an intermittent or reduced schedule leave, the employer may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which has equivalent pay and benefits and better accommodates recurring periods of leave than the employee's regular position.

6. **Spouses Employed by County.** Eligible spouses employed by the County are limited to a combined total of 12 weeks of FMLA leave during a single 12-month period for any or all of the following:

- a. the birth, adoption or foster care placement of a child;
- b. the care of a child after birth, adoption or placement; and/or
- c. the care of the employee's parent with a serious health condition.

However, each spouse is entitled to 12 weeks of FMLA leave for the serious health condition of the employee, the employee's spouse or the employee's child.

Spouses are also limited to a combined total of 26 weeks of FMLA leave during a single 12-month period for leaves involving:

- a. care of a military service member; and
- b. any or all of the following:
 - i. the birth adoption or foster care placement of a child,
 - ii. the care of a child after birth, adoption or placement, or
 - iii. the care of the employee's parent with a serious health condition,

with the portion of leave taken for purposes other than the care of a military member limited to a maximum of 12 weeks.

7. **Procedure to Request Leave.** Any employee who needs a FMLA leave must:

- a. **Notify department head.** Notify their department head of the need for leave and of the anticipated start date and duration of the leave; and
- b. **Notify Human Resources Department and provide required documentation.** Contact the Livingston County Human Resources Department to provide notice of the need for FMLA leave and request any forms that need to be completed in support of the leave. The Human Resources Department will provide written notice to the employee of the employee's potential eligibility for FMLA leave, will supply any forms that need to be completed, and will notify the employee of any supporting documentation that is required. The employee must return the completed forms and supporting documentation

to the Human Resources Department within the time frame specified. Failure to complete and return the necessary forms with any required supporting documentation within the time frame(s) specified may result in denial of the leave request.

When notice of need for leave must be given. If the leave is for an event described in 4(a), (b), (c) or (e) of this policy, notice must be provided to the Human Resources Department and the Department Head no later than 30 days prior to the first day of the requested leave unless the necessity for the leave is unforeseeable. If the need is unforeseeable, the employee shall provide notice as soon as practicable. If the leave is for an event described in 4(d) of this policy, the employee shall provide notice as soon as practicable after learning of the need for leave. Failure to provide timely notice of the need for leave may result in denial of the leave request.

8. **Second Medical Opinion.** The County reserves the right to require a second medical opinion, by a physician of the County's choice, to verify the information presented in the initial certification in all cases except those involving a qualifying event as described in 4(e) of this policy. The cost of the second opinion will be paid by the County. If the second opinion differs from the initial certification, the County and employee will jointly select a third physician to provide a third opinion. The cost of the third opinion will be paid by the County. The third opinion shall be binding on the parties.
9. **Health Insurance Premiums.** If an employee is using accruals to receive pay while on a FMLA leave, the payroll deduction for employee premiums will continue to be taken from wages paid. If an employee is not receiving pay while on a FMLA leave, the employee may continue coverage by making premium payments directly to the County Treasurer each month. If an employee on leave fails to pay the employee's share of any insurance premium, and continues to fail to do so for a period of 30 days, the employee will be terminated from insurance coverage.

The employer shall have the right to recover the premiums paid for maintaining coverage for the employee under any group health plan during the period of unpaid leave under this policy if the employee fails to return to work for reasons other than the continuation of the qualifying event or the onset of another qualifying event, or under circumstances beyond the employee's control. In this situation, the employer may require certification of inability to return to work. The premiums may be offset against any funds owed to the employee by the County.

10. **Use of Accruals During FMLA Leave.** If an employee has any accruals at the institution of a FMLA leave, the accruals must be used during the leave as specified. Accruals shall be used until exhausted or until the end of the leave, whichever occurs first.

If the basis of the leave is the employee's own serious health condition, the employee shall use their accruals in the order the employee designates. If the employee fails to designate the order, accruals will be used as follows:

- a. First: Sick leave; then
- b. Second: Floating holidays; then

- c. Third: Personal leave; then
- d. Fourth: Vacation accruals; then
- e. Fifth: Compensatory time; then
- f. Sixth: Paid time off.

If an employee's FMLA leave is due to any other reason, the employee may designate the order in which accruals will be used. In such circumstances, sick leave may only be used prior to other leave accruals if such use is permitted for the circumstances specified in the leave request, and then only to the extent such leave is allowed to be used under the applicable collective bargaining agreement or County rule. If the employee fails to designate the order, accruals will be used as specified in "b" through "f" above. Once an employee has exhausted leave accruals other than sick leave, the employee may, but will not be required to, use remaining sick leave accruals.

- 11. **Designation of Leave.** If an employee is eligible for a FMLA leave, the County shall designate such leave as a FMLA leave. The County will notify the employee of this designation promptly. If the County is unable to determine whether the leave qualifies as a FMLA leave, the employee shall provide such information as is reasonably necessary to enable the County to determine eligibility.
- 12. **Family and Medical Leave Act.** This document is not intended to be a complete description of the FMLA or of the County's rights under the FMLA. It is the County's intention to abide by all requirements set forth in the FMLA and to reserve all rights which it has under the FMLA. Nothing herein shall be construed to provide greater rights than set forth in the FMLA. If an employee has any questions regarding this policy, the employee should contact the Livingston County Human Resources Department.

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