

and law enforcement who may accrue 480 hours of compensatory time under the Fair Labor Standards. Compensatory time may be used during the introductory period.

Exempt employees, by definition, are exempt from the overtime and compensatory time off requirements of the Fair Labor Standards Act. Hence, exempt employees have no legal entitlement to compensatory time off. However, the County Administrator may, in his/her sole discretion, grant additional paid time off to exempt employees who have worked unusual amounts of time in excess of the normal schedule, but no exempt employee has a right to such additional paid time off. As a result, upon termination, there is no payment to exempt employees for compensatory time even if the County's employment software may appear to show an accrual of compensatory time.

## **Family and Medical Leave**

### Special notes:

Please refer to the Appendix to this Employee Handbook which contains information directly from the federal government regarding the Family and Medical Leave Act (FMLA). If, as time passes, there is any difference between the federal government's official interpretation of FMLA and this County policy, the County will use the federal government's official interpretation.

This policy does not create contract rights. In no case will an employee have a greater right to a job than s/he would have had if s/he had not taken leave under this policy. An employee and/or the employee's department head must notify the Human Resources Department if the employee is going to be out three (3) or more days.

The FMLA requires employers with 50 or more employees to provide eligible employees with unpaid leave. There are two types of leave available, including the basic 12-week leave entitlement (Basic FMLA Leave), as well as the military family leave entitlements (Military Family Leave) described in this policy. As a general rule, employees must request leaves of absence under this law and policy but, in appropriate situations, employees may be placed on FMLA leave status without application. In addition, FMLA does not allow an employee to decline FMLA leave.

Eligibility for FMLA Leave. Employees are eligible for FMLA leave if they:

- Have worked for the County for at least 12 months;
- Have worked at least 1,250 hours for the County during the 12 calendar months immediately preceding the request for leave; *and*
- Are employed at a work site that has 50 or more employees within a 75-mile radius.

Employees with any questions about their eligibility for FMLA leave should contact the Human Resources Department for more information.

Basic FMLA Leave. Employees who meet the eligibility requirements described above are eligible to take up to 12 weeks of unpaid leave during a rolling, 12-month period for one of the following reasons:

- To care for the employee's child after birth or placement for adoption or foster care;
- To care for a spouse, son, daughter, or parent ("covered relation") with a serious health condition;
- For incapacity due to the employee's pregnancy, prenatal medical or child birth; or
- Because of the employee's own serious health condition that renders the employee unable to perform an essential function of his/her position.

Military Family Leave. There are two types of Military Family Leave available.

• **Qualifying Exigency Leave.** Employees meeting the eligibility requirements described above may be entitled to use up to 12 weeks of their Basic FMLA Leave entitlement to address certain qualifying exigencies. Leave may be used if the employee's spouse, son, or daughter is on active duty or called to active duty status in the National Guard or Reserves in support of a contingency operation. Qualifying exigencies may include:

- Short-notice deployment (up to 7 days of leave);
- Attending certain military events;
- Arranging for alternative childcare;
- Addressing certain financial and legal arrangements;
- Periods of rest and recuperation for the service member (up to 5 days of leave);
- Attending certain counseling sessions;
- Attending post-deployment activities (available for up to 90 days after the termination of the covered service member's active duty status);

- Other activities arising out of the service member's active duty or call to active duty and agreed upon by the County and the employee.
- **Leave to care for a covered service member.** There is also a special leave entitlement that permits employees who meet the eligibility requirements for FMLA leave to take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has been rendered medically unfit to perform his or her duties due to a serious injury or illness incurred in the line of duty while on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

When both husband and wife work for the same employer, the aggregate amount of leave that can be taken by the husband and wife to care for a covered service member is 26 weeks in a single 12- month period.

Use of leave. An employee is not required to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Military Family Leave due to qualifying exigencies may also be taken on an intermittent basis. Leave may not be taken on an intermittent basis when used to care for the employee's own child during the first year following birth, or to care for a child placed with the employee for foster care or adoption, unless both the employer and employee agree to such intermittent leave.

Pay, Benefits, and Protections during FMLA Leave.

- **Leave is unpaid.** Family medical leave is unpaid leave (although employees may be eligible for short- or long-term disability payment and/or worker's compensation benefits under those insurance plans) if leave is taken because of an employee's own serious health condition.
- **Coordination of paid time off for unpaid leave.** An employee who must be absent for an FMLA-qualifying reason will be paid for time lost from work from accrued paid time off balances, if any. Leave taken under this policy counts toward the employee's 12 weeks of leave (or 26 weeks, where appropriate) regardless of whether all or part of the employee's leave is paid.

An employee's family medical leave runs concurrently with other types of leave, i.e., paid time off. An employee must extinguish any compensatory time before utilizing any available sick or annual leave.

For leave taken for a qualifying exigency, the employee must use compensatory leave time, sick and annual leave time concurrent with unpaid FMLA leave. The same rules apply as if the employee took FMLA leave to care for a family member with a serious health condition or for the birth or placement of a child.

For leave to care for a seriously injured or ill family member in the military an employee must use compensatory leave time, sick and annual leave time concurrent with unpaid FMLA leave. The same rules apply as if the employee took leave for his or her own serious health condition.

- **Medical and other benefits.** During an approved family medical leave, the County will maintain the employee's health benefits as if the employee continued to be actively employed. Where paid leave is used concurrently with unpaid family medical leave, the County will deduct the employee's portion of the health plan premium as a regular payroll deduction. If leave is unpaid, the employee must pay the employee portion of the premium and must do so by delivering to the Finance Department on or before the 20th of each month the employee's monthly portion of the premium.

If the payment is more than 15 days late, the County will send the employee a letter to this effect. If the employee returns to work or elects not to return to work at the end of the leave period, the employee will be required to reimburse the County for the cost of the premiums paid by the County for maintaining coverage during the unpaid leave.

- **Return to job at end of FMLA Leave.** Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.
- **Employee Responsibilities When Requesting FMLA Leave.** If the need to use FMLA leave is foreseeable, the employee must give the County at least 30 days' prior notice of the need to take leave. When 30 days' notice is not possible, the employee must give notice as soon as practicable (within 1 or 2 business days of learning of the need for leave except in extraordinary circumstances). Failure to provide such notice may be grounds for delaying the start of the FMLA leave.

Requests for FMLA leave must be submitted to the Human Resources Director. When submitting a request for leave, the employee must provide sufficient information for the County

to determine if the leave might qualify as FMLA leave, and also provide information on the anticipated date when the leave would start as well as the duration of the leave. Sufficient information may include that the employee is unable to perform job functions; that a family member is unable to perform daily activities; that the employee or family member needs hospitalization or continuing treatment by a healthcare provider; or the circumstances supporting the need for military family leave. Employees also must inform the County if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also will be required to provide a certification and periodic recertification supporting the need for leave.

- **Employer Responsibilities.** When an employee requests leave, the County will inform the employee whether s/he is eligible under the FMLA. If the employee is eligible, the employee will be given a written notice that includes details on any additional information s/he will be required to provide. If the employee is not eligible under the FMLA, the County will provide the employee with a written notice indicating the reason for ineligibility.

If leave will be designated as FMLA-protected, the County will inform the employee in writing and provide information on the amount of leave that will be counted against the employee's 12- or 26-week entitlement.

An employee's employment may be terminated if s/he does not return to perform the essential functions of the job, with or without reasonable accommodation, at the conclusion of the employee's leave of absence or the exhaustion of all accumulated, unused paid leave time.

Key Employees (salaried employees in highest paid 10% of all employees) –such employees may be denied reinstatement rights if reinstatement would cause substantial and grievous economic injury to operations.

Secondary employment (otherwise known as “moonlighting”) while out of work on FMLA or medical leave of absence without the express written permission of the County Administrator is prohibited.

Additional information on FMLA can be found in the Appendix to this Employee Handbook which contains a U.S. Department of Labor Wage and Hour publication titled “Employee Rights Under the Family and Medical Leave Act.”