



ALLEGHENY COUNTY

DEPARTMENT OF HUMAN RESOURCES

Policies and Procedures

Family and Medical Leave Act Leave of Absence

Policy Number: Employee Benefits, #18

Date Issued: February 24, 2015

This policy supersedes and replaces all previously issued policies related to Family Medical Leaves of Absence.

Previous Issues: September 1, 2014; April 1, 2002 and 1993

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- I. **Purpose/Background:** Allegheny County recognizes the need of employees to balance the demands of the workplace with the needs of their families and is committed to providing employees leaves of absence as required by law. Therefore, this policy is promulgated to comply with the Family and Medical Leave Act of 1993, Public Law [103-3], as amended by Section 585 of National Defense Authorization Act for FY 2008, Public Law [110-181], by Section 565 of the National Defense Authorization Act for FY 2009, Public Law [111-84], by the Airline Flight Crew Technical Corrections Act, Public Law [111-119], and the accompanying regulations, 29 CFR Part 825.
- II. **Scope:** This policy applies to all County employees.
- III. **Definitions contained in Title 1, Sec. 101 of the Family and Medical Leave Act of 1993 and the accompanying regulations:**
 - a. **Covered Servicemember:** The term “covered servicemember” means 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 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.
 - b. **Eligible Employee:** The term “eligible employee” means an employee:
 - i. who has been employed for a total of at least 12 months by Allegheny County on the date on which any FMLA leave is to commence and;
 - ii. who, on the date on which any FMLA leave is to commence, has met the hours of service requirement by having been employed for at least 1,250 hours of service with Allegheny County during the previous 12-month period.
 - iii. (Employment periods prior to a break in service of seven years or more will not be counted in determining whether an employee has been employed by Allegheny County

for at least 12 months unless the break in service is due to the employee's fulfillment of National Guard or Reserve Military obligation or a written agreement exists between Allegheny County and the employee regarding Allegheny County's intent to rehire the employee. Additionally, an employee who is returning from fulfilling his or her National Guard or Reserve Military obligation will be credited with the hours of service that would have been performed in determining whether he or she worked the 1250 hours of service.)

- c. **Health Care Provider:** The term "health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) 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 services.
- d. **Intermittent Leave/ Reduced Leave Schedule:** Leave taken in separate periods of time due to a single illness or injury or a leave schedule that reduces an employee's usual number of hours per workweek, or hours per workday.
- e. **Rolling 12 month period:** A "rolling" 12-month period is a 12-month period measured backward from the date an employee uses any FMLA leave.
- f. **Serious Health Condition:** A "serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following
 - i. **Incapacity and treatment:** A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - 1. treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, 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 orders of, or on referral by a health care provider; or
 - 2. 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.
 - 3. Treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity. Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30-day period shall be determined by the health care provider.
 - 4. The term "extenuating circumstances" means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in person visit is needed within the 30-day period, but the health care provider does not have any available appointments during that time period.
 - ii. **Pregnancy or prenatal care:** Any period of incapacity due to pregnancy, or for prenatal care.
 - iii. **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 (*e.g.*,

asthma, diabetes, epilepsy, *etc.*).

- iv. **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. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
- v. **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 of, 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, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), or kidney disease (dialysis).
- vi. Absences attributable to incapacity due to pregnancy or prenatal care or for chronic conditions qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

IV. **Policy Statement:** Allegheny County will grant temporary, unpaid Family Medical Leave to employees under the following circumstances and in the following manner:

a. Leave Entitlement:

- i. An eligible employee shall be entitled to a total of 12 workweeks of leave during a "rolling" 12-month period for one or more of the following qualifying reasons:
 - For the birth of a son or daughter of the employee and to care for the newborn child;
 - For placement with the employee of a son or daughter for adoption or foster care;
 - To care for the employee's spouse, son, daughter, or parent with a serious health condition;
 - Because of a serious health condition that makes the employee unable to perform the functions of the employee's job;
 - Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or orders to covered active duty status).
 - The entitlement to leave for a birth or placement of a son or daughter, (i.e. bonding time), shall expire at the end of the 12-month period beginning on the date of such birth or placement. "Bonding time" is not permitted to be taken intermittently.
- ii. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a "rolling" 12-month period to care for the servicemember with a serious injury or illness. During the single "rolling" 12-month period described an eligible employee shall be entitled to a combined total of 26 workweeks of leave.

- b. **Spouses Employed by Allegheny County:** Based upon departmental operations and needs, spouses, who are employed in the same County department and who are eligible for FMLA leave, may be limited to a combined total of 12 weeks of leave during a "rolling" 12-month period if the leave is taken for birth of the employees' son or daughter or to care for the child

after birth, for placement of a son or daughter with the employees for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition. Additionally, spouses, who are employed in the same County department, may be limited to a combined total of 26 weeks during a "rolling" 12-month period to care for a servicemember with a serious injury or illness.

- c. **Intermittent and Reduced-Schedule Leave:** Leave can be taken intermittently or on a reduced leave schedule when necessary. Hours an employee would have been required to work overtime but are not worked because of an FMLA-qualifying reason that limits the employee's ability to work overtime will be counted against the employee's FMLA entitlement.
- d. **Substitution of Accrued Paid Leave (i.e. Benefit Time):** An employee on approved FMLA leave is required to substitute accrued paid leave for unpaid FMLA leave in the following order: sick days, vacation days, then personal days. Ten days of accrued paid leave may be reserved. Sick days may only be used for a leave of absence due to the employee's own serious health condition. The unpaid FMLA leave and the substitution of paid leave will run concurrently.
- e. **Paid Parental Leave:** Full-time employees who are not subject to the provisions of a collective bargaining unit agreement and who take leave under this FMLA policy for the birth, adoption or foster care placement of a child will be granted six consecutive weeks of paid parental leave. This paid leave will not reduce or expand the total amount of leave time available to employees under this FMLA policy and will not include paid holidays as defined by the official calendar for County employees. Employees will be required to substitute accrued paid leave (i.e., Benefit time) in accordance with **Section IV. d.** of this policy for leave from work beyond the six weeks of paid parental leave.
- f. **Holidays and Holiday Pay:** An employee's FMLA entitlement will not be extended by the number of holidays. An employee in an "active pay status" will receive holiday pay while on a FMLA leave. An employee in a "no pay status" will receive holiday pay for holidays that occur during his or her leave when he or she returns to work.
- g. **Maintenance of Health Benefits:** Allegheny County will maintain health coverage at the same level and under the same conditions as if employment continued uninterrupted for an employee on an approved FMLA leave. The employee will be responsible for his or her share of benefit costs. Coverage may be terminated if payment is more than 30 days late. Allegheny County may recover from an employee the County portion of the premium paid to maintain benefit coverage during the leave if he or she does not return to work for reasons other than a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered servicemember or he or she returns for less than thirty days.
- h. **Workers' Compensation:** Time off work during which an employee is receiving Workers' Compensation benefits will be charged against the employee's 12-month FMLA leave entitlement.
- i. **Employee Responsibilities While on FMLA Leave:** An employee on an approved FMLA leave must contact his or her supervisor and any other designee at least once every 30 days to report his or her leave status and intent to return to work. If leave is taken intermittently, absent unusual circumstances, an employee must follow the required call-in procedures for reporting a FMLA-related absence as determined by the County. If leave is taken for medical treatment, the employee must make reasonable efforts to schedule those treatments so as not to disrupt business operations.
- j. **Restoration to Position:** An eligible employee who takes leave under the FMLA shall be entitled, upon return to work, to be restored to his or her original position or to an equivalent position with equivalent pay, benefits, and other employment terms.
- k. **Prohibited Acts:** Allegheny County will not interfere with, restrain, or deny the exercise of any right provided by the FMLA. Allegheny County will not discharge or discriminate against any individual for opposing any practice or because of involvement in any proceeding, related to FMLA. Employees cannot waive, nor will Allegheny County induce employees to waive, their prospective rights under FMLA.
- l. **Notice:** A notice explaining the provisions of the FMLA will be posted in each County

department on all bulletin boards normally used for such required postings. Additionally, information regarding the County FMLA policy will be included in the Employee Handbook, communicated to employees during “New Employee Orientation” sessions and posted on the County’s Intranet site.

- m. **Return to Work:** Failure to return to work after an FMLA leave has expired is subject to general employment policies and may result in termination of employment.
- n. **Violations:** Any employee who fails to comply with the provisions of this policy and these procedures may be subject to disciplinary action in accordance with the Allegheny County Progressive Discipline Policy.

V. **Allegheny County reserves the right to change this policy at any time.**

VI. **Procedures: FMLA Leave Requests and Designation of FMLA Leave**

- a. **Advance Notice:** Thirty days advance notice of the need to take FMLA is required when the need is foreseeable. If 30 days advance notice is not possible due to an emergency or unforeseen circumstance, then the employee must provide notice as soon as reasonable and practicable. Notice of the need for leave must be given to the employee’s supervisor and to UPMC WorkPartners. UPMC WorkPartners can be contacted by phone at 1-855-396-8762. Absent extenuating circumstances, within five business days of receipt of notification of the need for leave or upon learning leave is being taken for a FMLA-qualifying reason, UPMC WorkPartners will notify the employee of his or her eligibility to take FMLA leave. An employee is required, if possible, to notify his or her supervisor or other designee of the expected return-to-work date five days prior to his or her return. An employee returning from FMLA leave due to his or her own serious health condition must present a Return to Work Form or other certification from his or her health care provider to his or her supervisor or other designee prior to returning to work. Any employee who fails to provide the certification will not be permitted to return to work.
- b. **Leave Benefit Time Use Forms:** Employees who wish to reserve benefit days must complete the Leave Benefit Time Use Form and return it to their supervisor, department payroll personnel or other designee. Employees may obtain the Leave Benefit Time Use Form from their department payroll personnel, from the Department of Human Resources or from the County’s Intranet site.
- c. **Approval Process:** Timely and complete submission of adequate certification to substantiate the need for leave for a qualifying reason is required. Failure to provide adequate certification within 15 days may result in denial of the FMLA leave. Absences will be unauthorized and the employee may be subject to appropriate disciplinary action. UPMC WorkPartners will review the certification to determine whether the information submitted is sufficient to designate time off work as leave under the FMLA. UPMC WorkPartners will:
 - inform the employee the leave request is approved; or
 - inform the employee that additional information is needed to determine if the leave request can be approved, (information needed to make the certification complete and sufficient will be specified); or
 - inform the employee the County is exercising its right to obtain a second or third medical opinion; or
 - inform the employee that the FMLA leave request is not approved and the reason for denial.
- d. **Placing an employee on FMLA leave:** A representative in the department in which the employee works will prepare and submit a Personnel Action Authorization form (PAA 1000) to place the employee on a Family Medical Leave of Absence. The PAA 1000 must be approved by the Department Director and the Department of Human Resources.
- e. **Extension of Leave:** If an employee needs to take more leave than originally anticipated, he or she may request an extension of leave by contacting his or her department or other designee.

Documentation to support the extension of leave may be required.

- f. Returning an Employee from FMLA Leave:** A representative in the department in which the employee works will prepare and submit a Personnel Action Authorization form (PAA 1000) to return the employee to work. The PAA 1000 must be approved by the Department Director and the Department of Human Resources. If the leave was taken for the employee's own serious health condition, then documentation from his or her health care provider certifying he or she is able to return to work also must be reviewed and approved.

EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) a current 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 (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.*

***The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months*, and if at least 50 employees are employed by the employer within 75 miles.

***Special hours of service eligibility requirements apply to airline flight crew employees.**

Definition of 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 the employee's 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 incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need 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. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.



For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

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WHD Publication 1420 · Revised February 2013