



FMLA Policy

PURPOSE

Grand Traverse County will provide Family and Medical Leave Act (FMLA) leave to its eligible employees. The County posts the mandatory FMLA Notice and upon hire provides all new employees with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the FMLA. The FMLA is posted outside the Human Resources Office.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

If you have any questions, concerns, or disputes with this policy, you must contact Human Resources in writing.

POLICY & PROCEDURE

A. General Provisions

Under this policy, County will grant up to 12 weeks of leave during a 12-month period to eligible employees (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness). The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

B. Eligibility

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

1) The employee must have worked for the County for 12 months or 52 weeks immediately preceding the date the employee uses any FMLA leave. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed 7 years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the County's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.

2) The employee must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. The 1,250 hours do not include time spent on paid or unpaid leave. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

3) The employee must work in a worksite where 50 or more employees are employed by the County within 75 miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

C. Type of Leave Covered

To qualify as FMLA leave under this policy, the leave must be for one of the reasons listed below:

- 1) The birth of a child and in order to care for that child (leave must conclude within 12 months of the birth).
- 2) The placement of a child for adoption or foster care and in order to care for the newly placed child (leave must conclude within 12 months of the placement).
- 3) To care for a spouse, child or parent with a serious health condition (defined below).
- 4) The serious health condition (defined below) of the employee that makes the employee unable to perform the functions of his or her position.

Under the FMLA, a child is a "son or daughter" defined by the FMLA regulations as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either 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" at the time FMLA leave is to commence. The FMLA regulations provide separate definitions of "son or daughter" for its military family leave provisions that are not restricted by age.

In order for a parent to take FMLA leave for a child who is 18 or over, the son or daughter must:

- a) Have a disability as defined by the Americans with Disabilities Act (ADA) at the time the leave is to commence,
- b) Be incapable of self-care because of the disability,
- c) Have a serious health condition, and
- d) Need care because of the serious health condition.

Under the FMLA, a "spouse" means a husband or wife. Husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state. This definition includes an individual in a same-sex or common law marriage that either:

- a) was entered into in a state that recognizes such marriages; or
- b) if entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

A "serious health condition" means a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of 3 consecutive days of incapacity with the first visit to the health care provider within 7 days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees with questions about what illnesses are covered under this FMLA policy or under the County's sick leave policy are encouraged to consult with Human Resources.

If an employee takes paid leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the County may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

5) Qualifying exigency leave for families of members of the National Guard or Reserve or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following:

- a) short-notice deployment
- b) military events and activities
- c) child care and school activities
- d) financial and legal arrangements
- e) counseling
- f) rest and recuperation
- g) post-deployment activities
- h) additional activities that arise out of active duty, provided that the County and employee agree, including agreement on timing and duration of the leave

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserve, or a member of the Armed Forces, the National Guard or Reserve who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserve, or members on the permanent disability retired list.

(6) To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered service member.

- a) A "son or daughter of a covered service member" means the covered service member's biological, adopted, or foster child, stepchild or legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age.

- b) A "parent of a covered service member" means a covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member. This term does not include parents-in-law.
- c) The "next of kin of a covered service member" is the nearest blood relative, other than the covered service member's spouse, parent, son or daughter, in the following order of priority: blood relatives who have been granted legal custody of the 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. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin. For example, if a covered service member has 3 siblings and has not designated a blood relative to provide care, all 3 siblings would be considered the covered service member's next of kin. Alternatively, where a covered service member has siblings and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered service member's next of kin. The County is permitted to require an employee to provide confirmation of covered family relationship to the covered service member pursuant to § 825.122(k).

"Covered active duty" for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country. *Covered active duty or call to covered active duty status* in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation, in accordance with 29 CR 825.102.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as "child" for other types of FMLA leave, except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

(7) Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran (for definition refer to No. 6 above).

An employee whose son, daughter, parent or next of kin is a covered service member may take up to 26 weeks of leave in a single 12-month period to care for that service member.

Next of kin is defined as the closest blood relative of the injured or recovering service member.

The term "covered service member" means:

- (a) a member of the Armed Forces (including a member of the National Guard or Reserve) 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

- (b) 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 Reserve) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

The term "serious injury or illness" means:

- (a) in the case of a member of the Armed Forces (including a member of the National Guard or Reserve), an 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 the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating;
- (b) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserve) at any time during a period when the person was a covered service member, a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.
- (c) Outpatient status, with respect to a covered service member, the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

D. Amount of Leave

An eligible employee can take up to 12 weeks for the FMLA circumstances (No. 1) through (No. 5) (above) under this policy during any 12-month period. The County will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the County will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA circumstance (No. 6) (above) during a single 12-month period. For this military caregiver leave, the County will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If a husband and wife both work for the County and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for the County and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

These limitations apply even if the spouses are employed at different locations that are more than 75 miles apart. If only 1 of the spouses is eligible for FMLA leave, that individual is entitled to the full 12 workweeks of leave. These limitations do not apply to 2 employees working for the same employer

who are not legally married, even if they are living together or have a child or children together, or to siblings or other relatives who are working for the same employer.

E. Employee Status and Benefits During Leave

While an employee is on leave, the County will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, or leaves employment within 30 calendar days of the end of the FMLA leave period, the County will require the employee reimburse the County the amount it paid for the employee's health insurance premium during the leave period.

The County will maintain health, dental, and vision benefits for the employee at the same level and under the same conditions as if the employee continued to work while on FMLA leave. If required to pay a portion of their premium, the employee must make payment to the County Treasurer's office by the last business day of the month. If payment is not made as stated, the employee's health, dental, and vision coverage may be cancelled for the duration of the leave. The employee will be given notice of potential cancellation at least 15 calendar days prior to the effective date of cancellation. For purposes of retirement benefits, FMLA leave is treated as "continued service" for purposes of vesting and eligibility to participate.

If the employee contributes to a life insurance or disability plan, the County will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the County may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the County may discontinue coverage during the leave. The employee will be given notice of potential cancellation at least 15 calendar days prior to the effective date of cancellation. If the County maintains coverage, the County may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

F. Employee Status After Leave

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from a health care provider. This requirement will be included in the County's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one that is virtually identical in terms of pay, benefits and working conditions. The County may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to business operations. Key employees will be given written notice at the time FMLA leave is requested of his or her status as a key employee.

An employee may request an extension of leave beyond the 12-week period because of a serious medical condition. The employee must submit the request in writing to the department head with medical certification of a continued serious health condition a minimum of 2 weeks prior to the end of their FMLA Leave. The department head will review such request on a case-by-case basis in order to determine whether it can reasonably accommodate such a request with the unpaid leave policy.

Reinstatement is not guaranteed when an employee is granted extended leave and will depend on the business needs of the County. If an employee fails to return to work, or is unable to return to perform the essential functions of the job at the end of his or her leave, the employee will be considered to have voluntarily resigned their position with Grand Traverse County.

Certain highly-compensated employees are "key employees" and may be denied restoration to their prior or equivalent position. Key employees are those employees who are among the highest paid 10% of employees within the County. Denial is based on the following conditions:

- a. The denial is necessary to prevent substantial economic injury to the County;
- b. The County has notified the employee of his/her key employee status, as well as the decision to deny restoration should the leave take place or continue; and
- c. The employee elects not to return to work after being notified of the County's decision.

G. Use of Paid and Unpaid Leave

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid vacation, personal or sick leave prior to being eligible for unpaid leave, unless such leave is covered under Workers' Compensation Insurance or Disability Insurance, in which case the employee may only use accumulated leave time for the purpose of satisfying any waiting period. Sick leave may be run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave policy. Accrual of vacation or any applicable leave time will continue while under FMLA leave.

Disability leave for the birth of a child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. For example, if a County provides 6 weeks of pregnancy disability leave, the 6 weeks will be designated as FMLA leave and counted toward the employee's 12-week entitlement. The employee may then be required to substitute accrued (or earned) paid leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement. An employee who is taking leave for the adoption or foster care of a child must use all paid vacation, personal or family leave prior to being eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation and personal leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid vacation, personal leave or sick leave (as long as the reason for the absence is covered by the County's sick leave policy) prior to being eligible for unpaid leave.

H. Intermittent Leave or a Reduced Work Schedule

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period). If the employee plans to take intermittent leave or work a reduced schedule, the certification must also include the dates and duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced schedule.

Leave due to a serious health condition, a serious illness or injury of a service member or a qualifying exigency may be taken intermittently (in separate blocks of time due to a single health condition) in minimum 15 minute increments or on a reduced leave schedule (reducing the number of hours you

work per workweek or per workday) if medically necessary. If the leave is unpaid, the County will adjust an employee's salary based on the amount of time actually worked.

In addition, while on intermittent or reduced-schedule leave, the County may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care. An employee on an intermittent or reduced leave schedule will need to work with his/her department head to the extent possible to arrange a schedule that best suits the needs of the department.

For the birth, adoption or foster care of a child, the County and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. Otherwise, such leave must be taken within 1 year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach an agreement with the County before taking intermittent leave or working a reduced-hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

I. Certification for the Employee's Serious Health Condition

The County will require certification for the employee's serious health condition. The certification must include the first anticipated date of absence from service, a diagnosis, a brief statement describing treatment, and the expected date of return. The physician must state the employee is unable to perform the essential functions of the employee's job. Occasional updates to the medical certification may be required. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition.

The County may directly contact the employee's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The County will not use the employee's direct supervisor for this contact. Before the County makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the County will obtain the employee's permission for clarification of individually identifiable health information.

The County has the right to ask for a second opinion if it has reason to doubt the certification. The County will pay for the employee to get a certification from a second doctor, which the County will select. If necessary to resolve a conflict between the original certification and the second opinion, the County will require the opinion of a third doctor. The County and the employee will mutually select the third doctor, and the County will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion. The County may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion.

J. Certification for the Family Member's Serious Health Condition

The County will require certification for the family member's serious health condition. The certification to support a leave for family medical reasons must include the dates on which treatment is expected and its duration as well as a statement indicating that the employee's presence is necessary or would be beneficial for the care of the family member and the period of time, care, or presence needed. Occasional updates to the medical certification may be required. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition.

The County may directly contact the employee's family member's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The County will not use the employee's direct supervisor for this contact. Before the County makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the County will obtain the employee's family member's permission for clarification of individually identifiable health information.

The County has the right to ask for a second opinion if it has reason to doubt the certification. The County will pay for the employee's family member to get a certification from a second doctor, which the County will select. If necessary to resolve a conflict between the original certification and the second opinion, the County will require the opinion of a third doctor. The County and the employee will mutually select the third doctor, and the County will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion. The County may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion.

K. Certification of Qualifying Exigency for Military Family Leave

The County will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Occasional updates to the medical certification may be required. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave.

L. Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave

The County will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Occasional updates to the medical certification may be required. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service member.

M. Recertification

The County may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, or if the County receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the County may request recertification for the serious health condition of the employee or the employee's family

member every 6 months in connection with an FMLA absence. The County may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

N. Procedure for Requesting FMLA Leave

When requesting leave, the employee must provide Human Resources with at least 30 calendar days of advance notice, whenever possible, by submitting a Request for Leave of Absence Form, and a Medical Certification form. If the need for the leave is not foreseeable, the employee must provide notice to his/her supervisor as soon as possible (within the same or next business day), consistent with the County's absence notification policies, and provide sufficient information for the County to reasonably determine the reason for the leave and its anticipated duration. Failure to provide timely notice may result in denial of leave until notice is provided.

Employees should inform their supervisor if an absence is for FMLA leave, and if approved for more than one leave, which FMLA leave applies. The County may credit an absence to an FMLA leave if there is any indication the absence is covered by the FMLA. When leave is needed for planned medical treatment, employees must attempt to schedule treatment so as not to unduly disrupt the County's operations. Failure to provide appropriate notice may result in the denial of leave.

O. Designation of FMLA Leave

Within 5 business days after the employee has submitted the appropriate certification form, Human Resources will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice.

P. Intent to Return to Work from FMLA Leave

On a basis that does not discriminate against employees on FMLA leave, the County may require an employee on FMLA leave to report periodically (at least every 2 weeks) on the employee's status and intent to return to work.

Q. Notice Upon Return from Leave

If an employee returns from any period of absence which has not been designated as FMLA leave, and the employee wishes to have the leave counted as FMLA leave, the employee must notify the County within 2 business days of returning to work that the leave was for FMLA reasons. Failure to provide the necessary notice will prevent any subsequent assertion of FMLA protection for that absence.

Note: This policy may differ for those employees who are members of recognized unions, organizations, or associations. Any questions related to the content of this policy, or its interpretation, should be directed to Human Resources.