



CHESTERFIELD COUNTY ADMINISTRATIVE POLICIES AND PROCEDURES

Department: Human Resources
Subject: Family & Medical Leave Act

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I. INTRODUCTION

All full-time and part-time employees who have worked at least one year for Chesterfield County and have worked 1,250 hours for the county during the 12-month period preceding the commencement of leave are eligible for 12 workweeks of job-protected family and medical leave under the following circumstances:

- A. The employee's spouse, parent, son or daughter has a serious health condition that requires the employee's care
- B. The birth of a son or daughter, or the placement of a son or daughter for adoption or foster child, and to bond with the newborn or newly placed child
- C. The employee's own serious health condition

The Federal Family and Medical Leave Act (FMLA) of 1993 requires that all eligible employees are provided up to 12 weeks of protected FMLA leave annually for certain family and medical reasons. FMLA leave does not have to be paid leave. However, employees may, and in some cases will be required to, use their accumulated paid leave for FMLA purposes. The object of this policy is to explain to employees and supervisors when FMLA leave may be taken and how FMLA leave is calculated and accounted for, giving consideration to the leave benefits employees already receive.

II. DEFINITIONS

- A. **Eligible Employee** – An employee who has been employed by the County of Chesterfield for at least 12 months (need not be consecutive months) and has worked for at least 1,250 hours during the 12-month period preceding the commencement of leave. Hours worked does not include paid or unpaid leave.
- B. **Health Care Provider** – A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or a podiatrist, dentist, clinical psychologist, optometrist or chiropractor authorized to practice in their state and performing within the scope of their practice as defined under state law; or nurse practitioners and nurse-midwives who are authorized to practice under state law and who are performing within the scope of their practice as defined under state law; and Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.
- C. **Immediate Family Member** – For purposes of this regulation means the child, spouse, or parent of the employee.
- D. **Parent** – The parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child. The term "parent" does not apply to an employee's "parents-in-law."
- E. **Serious Health Condition** – An illness, injury, impairment, or physical or mental condition that requires inpatient care or continuing treatment by a health care provider. This can include conditions with short-term, chronic, long-term or permanent periods of incapacity.
- F. **Spouse** – A husband or wife as defined or recognized under state law for purposes of marriage including individuals in a same-sex marriage. This does not include domestic partners.

- G. **Son or Daughter** – A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis. The child must be under age 18 or be age 18 or older and incapable of self-care because of a mental or a physical disability.

III. GENERAL PROVISIONS

- A. Eligible employees are granted 12 weeks of FMLA leave that coincides with a fixed 12-month “leave year.” The fixed 12-month “leave year” begins the first day of the pay period that is paid on the first January paycheck and ends on the last day of the pay period that is paid in the last December paycheck.
- B. Taking FMLA leave shall not result in the loss of any employment benefits accrued prior to the date leave commences, except paid leave taken as FMLA leave.
- C. In accordance with Administrative Procedure 6-1, employees in the traditional leave plan may use accrued sick leave if the employee is unable to work due to an illness or injury incapacitating the employee. If the employee is not incapacitated, he/she (except as indicated in these sections) must use annual leave, compensatory time, or leave without pay. The employee will not accrue vacation leave, sick leave, holiday leave or pay during any period of leave without pay.
- D. FMLA leave for the birth of a child will not be permitted on an intermittent basis. FMLA leave for the birth of a child must be taken in consecutive days. If the employee is in paid FMLA status and there is a business need for employees to work intermittently, the HR director may approve an exception to this policy.
- E. FMLA leave for a serious health condition will be granted on an intermittent basis, if medically necessary. Certification from the attending physician documenting the necessity for intermittent leave will be required. Recertification is required, at a minimum, every 12 months. If the employee’s use of intermittent FMLA leave is not supported by the Certification of Health Care Provider form, the department may request that the employee provide an updated form within 15 calendar days. If the employee does not comply with the request to provide the updated Certification of Health Care Provider form, FMLA leave, and/or other county leave benefits may be denied.
- F. Current health and dental care coverage will be maintained for the duration of time the employee is out on FMLA leave, with the county paying both the employee and county portions when the employee is on FMLA leave without pay. The employee’s portion of the premium payments will be collected on a pre-tax basis upon the return of the employee from FMLA leave. This will be accomplished by making multiple health care premium deductions per pay period (not to exceed 3). If an employee fails to return to work in their original or equivalent full-time position after the employee’s FMLA leave entitlement has expired (unless for medical disability), the employee must reimburse the county for all of the health benefit premiums the county paid (both the county’s and the employee’s share) during the period of unpaid FMLA leave.
- G. For employees in the traditional leave plan, accumulated sick leave is counted toward the 12 weeks the employee is entitled to under the Family and Medical Leave Act for their own serious health condition. Therefore, employees must use their accumulated sick leave for their own serious health condition before taking unpaid FMLA leave. Employees may use their annual leave or floating holidays for FMLA leave purposes, but they are not required to do so. If they do, that leave is also counted toward the 12-week FMLA entitlement. The employee may also request to use their compensatory time, but compensatory time cannot be counted toward the 12-week FMLA entitlement.
- H. For employees in the Paid Time Off (PTO) plan, accumulated PTO is counted toward the 12 weeks the employee is entitled to under the Family and Medical Leave Act. Employees must use their accumulated PTO leave before taking unpaid FMLA leave.

- I. Life insurance, optional life insurance, and long-term disability benefits will be maintained by the county while the employee is on FMLA leave without pay. The employee's portion of the premium payments will be collected upon the return of the employee from FMLA leave. If an employee fails to return to work after the employee's FMLA leave entitlement has expired, the employee must reimburse the county for all premiums the county paid (employee and employer's portions) during the period of unpaid FMLA leave. Flex-med will be collected upon the employee's return to work. Contributions toward VRS are discontinued when an employee is on FMLA leave without pay.
- J. Merit dates and leave accrual dates for employees on FMLA leave will not change during their absence.
- K. An employee who is on workers' compensation for more than two weeks (80 hours) shall be informed in writing by their department director or designee that their workers' compensation absence will be counted against the employee's FMLA leave entitlement. An employee who is receiving workers' compensation benefits while on FMLA leave may not be forced to return to work in a light duty assignment prior to the expiration of the FMLA leave entitlement. However, if the employee refuses to accept the light duty assignment, workers' compensation benefits will be suspended.
- L. An employee who takes FMLA leave shall be entitled, on return from such leave, to be restored to the same job classification of employment held by the employee when the leave commenced; or to be restored to an equivalent job classification with equivalent employment benefits, pay, and other terms and conditions of employment.
- M. Once an employee has exhausted FMLA leave and cannot return to work, the county can terminate employment even if the employee has a remaining accrued leave balance.
- N. When leave is taken to care for a family member, the county may require the employee to provide documentation or statement of family relationship (e.g., birth certificate or court documentation). Employees shall have a medical provider complete a Certification of Health Care Provider Form for family member FMLA qualifying events, including when requesting FMLA leave to care for an adult child.
- O. Using an employee's request for or use of FMLA leave as a negative factor in employment actions, such as hiring, promotions, career development or disciplinary actions is prohibited.

IV. PROCEDURE – EMPLOYEE REQUESTING FMLA LEAVE

- A. When an employee requests FMLA leave, the HR Liaison or designee shall complete relevant sections of the DOL Notice of Eligibility & Rights and Responsibilities form and provide this form and other required documents (e.g., Certification of Health Care Provider form) to the employee. These forms are available on the Human Resources (HR) Intranet site or from the HR department. The following information should be obtained:
 - 1. Determine the employee's eligibility. Did the employee work for the county at least 12 months (not necessarily consecutive) as of the date leave will begin? Did the employee work at least 1,250 hours during the 12 months immediately preceding the commencement of leave?
 - 2. Determine the estimated start date for the leave. Has the employee given at least 30 calendar days notice? If not, was 30 days notice practical? If so, the department director or designee may delay the starting date to 30 calendar days from the request. The decision to delay the beginning date must be made in writing and be made a part of the employee's personnel file.
 - 3. Determine the type of leave requested. Does the employee want to take intermittent leave? Remember that granting intermittent leave for the birth, adoption, or foster

care placement of a child is not permitted. However, when intermittent leave is for a serious health condition, the department head or designee must grant it.

4. Determine the anticipated duration of leave. Remember, a total of 12 workweeks within the fixed 12-month “leave year” is the maximum that is permitted. Requests for leave beyond the stated maximum would be subject to approval under other applicable leave policies.
 5. Check the employee’s leave balance. How much PTO, sick, annual, floating holidays and compensatory leave does the employee have? For the employee’s own serious health condition, employees in the traditional leave plan must exhaust all sick leave before going on annual leave, floating holiday or leave without pay.
- B. The employee must arrange for a health care provider to complete and return the Certification of Health Care Provider form to the department HR Liaison. When possible, the employee will provide the medical certification before leave begins. When this is not possible, the employee will provide certification within 15 calendar days of the request, unless it is not practicable under the particular circumstances to do so despite the employee’s diligent, good faith efforts. The county may allow additional time for the employee to provide a completed Certification of Health Care Provider form. If the employee does not comply with the request to provide the Health Care Provider form, FMLA leave, and/or other county leave benefits may be denied. Health Care Provider Certification forms must be kept in a separate confidential file and be treated as confidential medical records.
- C. The department director or designee must forward a completed copy of the DOL Notice of Eligibility & Rights and Responsibilities form to the employee approving or denying the leave request. If the request is denied, the director must notify the employee in writing, outlining the reasons for the denial.
- D. The DOL Notice of Eligibility & Rights and Responsibilities form, Health Care Provider Certification form (or other supporting documentation) and FMLA webform shall be forwarded to HR when the employee will remain in paid status while on FMLA leave (i.e., PTO, sick or annual leave or floating holiday). In cases where an employee will be placed on FMLA leave without pay, the employee’s Personnel Action Form shall also be forwarded to Human Resources (HR).
- E. When an employee who has been out on FMLA leave for his or her own serious health condition is ready to return to work, the employee may be required to present a statement from his or her health care provider certifying that the employee is medically able to return to work. For leave absences in excess of 30 days the employee shall follow guidelines set forth in Administrative Procedure 13-4, Return to Work Medical Evaluations.
- F. Whenever a request for FMLA leave is denied, the denial and the reasons there for must be made in writing and a copy sent to the employee and placed in the employee’s central personnel file.
- G. Any denial of FMLA leave may be reviewed by the Director of HR at the employee’s request. The decision of the Director of HR or designee shall be final and binding to all parties.

V. PROCEDURE – EMPLOYER DESIGNATION OF FMLA LEAVE

- A. An employee’s leave may qualify as FMLA leave and may be designated by the employer as FMLA leave, even when an employee does not specifically request FMLA leave. Therefore, extended absences that qualify for FMLA leave (80 hours or greater) shall be designated and counted toward the 12-week entitlement. Shorter periods of leave that qualify may be designated at the discretion of the department director. Properly accounting for FMLA leave gives employers a way to ensure reasonable leave is taken. An employee who is out on extended sick leave, for example, may come back to work and immediately ask for leave

under the FMLA to care for a seriously ill relative. If the sick leave has not been designated as FMLA leave, the employee may also be entitled to a full 12 weeks of FMLA leave.

- B. The department director or designee must inform the employee that leave will be designated as FMLA leave, at least orally, within two business days after learning the leave qualifies as FMLA leave. Written notice of the designation must follow no later than the next payroll period. This can be done in the form of a memo or by having the employee complete the DOL Notice of Eligibility & Rights and Responsibilities form and forwarding a copy of the approved form back to the employee.
- C. The DOL Notice of Eligibility & Rights and Responsibilities form, Healthcare Provider Certification form and FMLA webform shall be forwarded to HR when the employee will remain in paid status while on FMLA leave (i.e., PTO, sick or annual leave or floating holiday). In cases where an employee will be placed on FMLA leave without pay, employee's Personnel Action Form shall also be forwarded to HR.
- D. In most cases, leave cannot be counted as FMLA leave retroactively. One exception is if the supervisor was not aware of the reason for the leave. In this case, leave may be designated as FMLA leave retroactively, only while the leave is in progress or within two business days of the employee's return to work.

VI. SERVICEMEMBER FAMILY AND MEDICAL LEAVE

The Federal Family and Medical Leave Act also entitles eligible employees to take leave for a covered family member's service in the Armed Forces ("Servicemember FMLA"). Except as mentioned below, an employee's rights and obligations to Servicemember FMLA Leave are governed by previous sections of this policy.

- A. Leave Entitlement – Servicemember FMLA provides eligible employees unpaid leave for any one, or for a combination, of the following reasons:
 - 1. A "qualifying exigency" (call to duty) arising out of a covered family member's active duty or call to active duty in the Armed Forces in support of a contingency plan.
 - 2. The care for a covered family member who has incurred an injury or illness in the line of duty while on active duty in the Armed Forces provided that such injury or illness may render the family member medically unfit to perform duties of the member's office, grade, rank or rating.
- B. Duration of Servicemember FMLA:
 - 1. When Leave is Due to a "Qualifying Exigency" (call to duty) – An eligible employee may take up to 12 workweeks of leave during a single 12-month period.
 - 2. When Leave is to Care for an Injured or Ill Service Member – An eligible employee may take up to 26 workweeks of leave during a single 12-month period to care for the servicemember. Leave to care for an injured or ill servicemember, when combined with other FMLA – qualifying leave, may not exceed 26 weeks in a single 12-month period.