

## **8.10 FAMILY AND MEDICAL LEAVE (FMLA)**

The federal Family and Medical Leave Act of 1993 (FMLA) require an employer to provide eligible employees with unpaid or paid leave under certain circumstances. There are two types of leave available:

1. The basic 12-week FMLA entitlement; and
2. The Military Family Leave (FML) entitlement described in this policy.

### **ELIGIBILITY**

To be eligible for benefits under this policy, an employee must:

1. Have worked for Austin County at least 12 months (it is not required that these 12 months be consecutive; however, a continuous break in service of 7 years or more will not be counted toward the 12 months); and
2. Have worked at least 1250 hours during the previous 12 months; and

Any employees with any questions about their eligibility for FMLA leave should contact Human Resources for more information.

### **QUALIFYING EVENTS:**

Family medical leave under this policy may be taken for the following reasons:

1. The birth of a child and to care for that child;
2. The placement of a child in the employee's home for adoption or foster care;
3. To care for a spouse, child (under the age of 18 or if over 18 incapable of self-care due to a disability), or parent with a serious health condition;
4. The serious health condition of the employee that make the employee unable to perform the essential functions of their job;
5. A qualifying exigency arising out of the fact that an employee's spouse, child or parent is a covered military member of the Armed Forces (Regular, Reserve or National Guard), deployed to a foreign country or has been notified of an impending call or order to active duty in a foreign country;
6. To care for a covered service member (Regular, Reserve or National Guard) with a serious injury or illness if the employee is the spouse, child, parent or next of kin (nearest blood relative) of the service member; or
7. To care for a covered veteran who is undergoing medical treatment, recuperation or therapy, for a serious injury or illness and who was a member of the Armed Forces (Regular, Reserve or National Guard) at any time during the period of 5 years preceding the date on which the veteran began that medical treatment, recuperation or therapy.

## **SERIOUS HEALTH CONDITION:**

Serious health condition is defined as a health condition that requires overnight inpatient care at a hospital, hospice, or residential care medical facility or continuing treatment by a health care provider.

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

- 1) 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:
  - a) Treatment two or more times within 30 days of incapacity; or
  - b) Treatment by a health care provider on at least one occasion within the first seven days of incapacity that results in a regimen of continuing treatment by a health care provider.
- 2) Any period of incapacity due to pregnancy or pre-natal care.
- 3) Any period of incapacity or treatment due to a chronic serious health condition that requires periodic visits to a health care provider and continues over an extended period of time.
- 4) Any period of incapacity that is permanent or long term due to a condition for which treatment is not effective.
- 5) Any period of incapacity or absence to receive multiple treatments by a health care provider.

## **LENGTH OF LEAVE:**

An employee may use up to 12 weeks leave per 12-month period under this policy. Austin County sets the 12-month period used under this policy as a rolling 12-month period measured backward from the date an employee uses FMLA leave.

A married couple who both work for the county is entitled to a maximum combined leave of 12 weeks in any 12-month period for the birth of healthy newborn child (i.e., bonding time) or placement of a child, or care for a parent with a serious health condition. The combined limit for a married couple employed by the county is 26 weeks in a single 12-month period if leave is to care for a covered service member or veteran with a serious injury or illness.

## **WORK RELATED INJURY:**

Austin County will always designate qualifying work-related injuries with lost time as FMLA qualifying.

## **SUBSTITUTION OF PAID LEAVE:**

Austin County requires substitution of paid leave for all FMLA or MFL events. An employee must follow the compensatory, vacation and sick leave policy guidelines. The balance of FMLA

is unpaid leave. FMLA and MFL run concurrently with all substituted paid leave, including Workers' Compensation leave.

The maximum amount of paid and unpaid leave that may be used under this policy in a 12-month period is 12 weeks, except for qualifying leave to care for a covered military member with a serious injury or illness which is a maximum of 26-weeks in a 12-month period.

#### **CONTINUED EMPLOYEE BENEFITS:**

While an employee is on leave under this policy, the county will continue to pay the employee's medical plan premium at the same rate as if the employee had been actively at work. The employee is required to pay for dependent coverage and for any other coverage for which the employee would normally pay, or the coverage will be discontinued. An employee's obligation to pay for coverage will be made through regular payroll deduction while the employee is on paid leave status. While on unpaid leave, the employee is required to pay for premiums including employee and county portion due to the county no later than 30 days after the date of the pay period in which the premium comes due. The county may cancel unpaid coverage by providing the employee advance written notice, not less than 15 days before the coverage will be cancelled for non-payment.

#### **INTERMITTENT LEAVE AND REDUCED SCHEDULE:**

An employee may take intermittent leave under this policy if it is necessary for the care and treatment of a serious health condition of the employee, the employee's eligible family member or the care of a covered military member or veteran.

An employee may work a reduced schedule under this policy if it is necessary for the care and treatment of a serious health condition of the employee, the employee's eligible family member, or the care of a covered military member or veteran.

All work time missed as the result of intermittent leave or a reduced work schedule under this policy will be deducted from the employee's 12-week or 26-week leave eligibility in a single 12-month period.

#### **CERTIFICATION REQUIREMENTS:**

The county has the right to ask for certification of the serious health condition of the employee or the employee's eligible family member when the employee requests or is using leave under this policy.

The county may send a request for medical certification to an employee who has been out of work for three or more days to determine the employee's FMLA eligibility. The employee shall have their physician complete and return the medical certification, or provide appropriate documentation, within 15 days of the employee's receipt of the form to be eligible for FMLA. An employee's failure to return the medical certification may result in denial of FMLA by the county.

The employee must respond to the county's request for certification within 15 days of receipt of the request or provide a reasonable explanation for the delay in writing before the 15<sup>th</sup> day after

receipt of the request. If an employee does not provide certification or otherwise respond, the county may deny leave under this policy.

If an employee requests intermittent leave or a reduced work schedule, the certification submitted must also include the dates and duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced schedule. The county may request re-certification for intermittent or reduced schedule leave every six months in connection with an eligible absence.

The county may ask for a second opinion from a health care provider of the county's choice, at the expense of the county, if the county has reason to question the certification, unless the leave is necessary to care for a seriously injured or ill covered service member supported by an invitational travel order (ITO) or invitational travel authorization (ITA) to join an injured or ill service member at their bedside.

If there is a conflict between the certification submitted by the employee and the second certification obtained by the county, the county may require a third certification, at the expense of the county, from a health care provider agreed upon by both the employee and the county. The third opinion is final and binding on the county and the employee.

#### **REQUESTING LEAVE:**

Unless FMLA leave is unforeseeable, an employee is required to submit a written request for leave under this policy to their immediate supervisor.

Where reasonably practicable, an employee should give their immediate supervisor a minimum of 30-days' notice before beginning leave under this policy. Where it is not reasonably practicable to give 30-days' notice, the employee is required to give as much notice as possible.

#### **REINSTATEMENT:**

An employee returning from leave under this policy, and who has not exceeded the 12-week maximum leave period allowed, will be returned to the same job or a job equivalent to the job the employee held before going on FMLA leave. An employee who has not exceeded the 26-week maximum leave period in a single 12-month period, to care for a seriously ill or injured covered military member, will be returned to the same job or a job equivalent to the job the employee held before going on leave. If an employee is placed in a different position, it will be one with equivalent status, pay, benefits, and other employment terms and which entails substantially equivalent skill, effort, responsibility, and authority.

The county has no obligation to reinstate an employee who takes more than the 12 weeks of leave allowed under this policy, or who elects not to return to work after using the maximum leave allowed, including an employee with available sick or vacation leave.

#### **OTHER BENEFITS:**

While on leave without pay under this policy, an employee does not earn vacation or sick leave, is not eligible for holiday pay, and does not earn other benefits afforded to employees actively at work.

An employee who is out on approved FMLA leave may not take trips outside of the country unless the travel is related to the employee's own serious health condition, the serious health condition of the child, spouse or parent of the employee or to attend qualifying military events.

An employee may ask their immediate supervisor for written permission to take other trips outside of the country which may be granted at the supervisor' sole discretion. Employees are forbidden from working another job while on approved FMLA leave from the county.

**REGULATION:**

Any area or issue regarding family and medical leave that is not addressed in this policy is subject to the basic requirements of the FMLA and the regulations issued to implement it.

**RETURN-TO-WORK:**

An employee is required to provide a fitness-for-duty certification before the employee returns to work.

**ENFORCEMENT:**

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer for unlawful discrimination under the FMLA. The FMLA does not affect any federal or state law prohibiting discrimination or supersede any federal or state law that provides greater family medical leave rights.