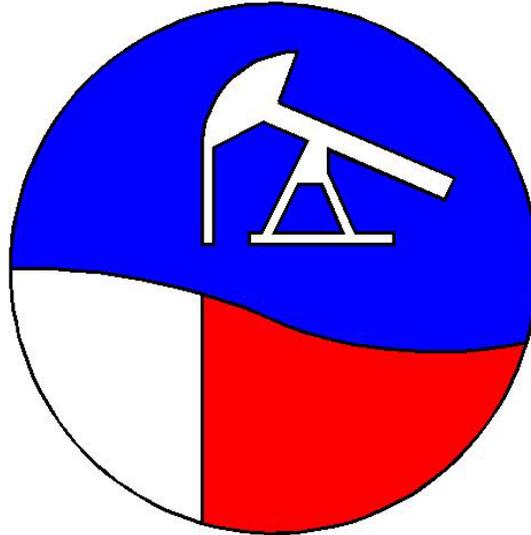


# **ECTOR COUNTY, TEXAS**



## **FAMILY AND MEDICAL LEAVE POLICY WITH MILITARY LEAVE ENTITLEMENTS**

**ADOPTED BY**

**ECTOR COUNTY  
COMMISSIONERS COURT**

**REVISED**

**SEPTEMBER 28, 2009**

# **FAMILY AND MEDICAL LEAVE POLICY WITH MILITARY LEAVE ENTITLEMENTS**

Ector County will comply with the Family and Medical Leave Act implementing Regulations as revised effective January 16, 2009. Ector County posts the mandatory FMLA Notice required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical Leave Act on the Human Resources Department bulletin board, as well as with other labor law posters located in each separate Ector County building and upon hire, provides all new employees with said notice. Ector County also posts the DOL supplementary information concerning Military Family Leave at the same locations.

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 the Ector County Human Resources Director at 1010 E. 8<sup>th</sup> Street, Suite 630, Odessa, Texas 79761 in writing.

## **I. GENERAL PROVISIONS:**

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

During the leave period, health insurance benefits and other benefits specified in this Policy will be continued, subject to any restrictions or conditions set forth in this Policy. The right to take leave under this Policy shall apply equally to male and female employees of Ector County.

Ector County will require employees to utilize FMLA leave concurrently with other paid leave, including sick leave, vacation leave, emergency leave, holiday leave and if appropriate, Sick Pool leave and workers' comp leave, if the reason for the leave qualifies for FMLA leave, regardless of whether or not the employee has requested FMLA leave. Ector County will provide written notice of an employee's effective date of being placed on FMLA leave.

**ALL ACCRUED PAID LEAVE AN EMPLOYEE IS REQUIRED TO TAKE UNDER THIS POLICY SHALL COUNT TOWARDS THE TWELVE (12) WEEKS OF FAMILY AND MEDICAL LEAVE OR MILITARY FAMILY AND MEDICAL LEAVE OR UP TO 26 WEEKS OF MILITARY CAREGIVER LEAVE GUARANTEED BY THIS POLICY.**

## II. ELIGIBILITY:

In order to qualify to take family and medical leave under this Policy, the employee must meet **all** of the following conditions:

- (A) The employee must have been employed by Ector County for at least 12 months or 52 weeks. The 12 months or 52 weeks of employment by Ector County do not need to have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years or more. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations. 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.
- (B) The employee must have worked at least 1,250 hours for Ector County during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in determining the 1,250-hour eligibility test for an employee under FMLA.

## III. TYPE OF LEAVE COVERED:

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

- (A) *The birth of a child and in order to care for that child.*
- (B) *The placement of a child in the employee's home for adoption or foster care and to care for the newly placed child.*
- (C) *To care for a spouse, child, or parent with a serious health condition (described below).*
- (D) *The serious health condition (described below) of the employee.*

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

A **serious health condition** is defined as a condition that requires overnight 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.

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 which results in a regimen of continuing treatment by a health care provider. This treatment must occur within the first seven days of incapacity.
- (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 which 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.

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 three consecutive, full calendar days of incapacity, with the first visit to the health care provider within seven 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 is covered under this FMLA Policy or the County's Sick Leave Policy should consult with the Human Resources Director.

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

- (E) ***Qualifying exigency leave for families of members of the National Guard and Reserves when the covered military member is on active duty or called to active duty in support of a contingency operation.***

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on 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:

- (1) Leave may be taken to address any issue that arises because the covered military member was given seven or less days notice for active duty deployment in support of a contingency operation. An eligible employee may take up to 7 days

beginning on the date the covered military member receives the call or order to active duty.

- (2) Leave may be taken to attend any official ceremony, program or event sponsored by the military that is related to the active duty or call to active duty status of a covered military member.
- (3) Leave may be taken to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations or the American Red Cross that are related to active duty or call to active duty status of a covered military member.
- (4) Leave may be taken to arrange for alternative childcare, provide childcare on an urgent basis (not as routine), to attend school or daycare meetings, to enroll or transfer covered children under age 19 when it is necessitated by the active duty or call to active duty status of a covered military member.
- (5) Leave may be taken to make or update financial or legal arrangements to address the covered member's absence while on active duty or call to active duty status.
- (6) Leave may be taken to act as the covered military member's representative before a governmental agency for obtaining, arranging or appealing military service benefits while the covered military member is on active duty or call to active duty status and for a period of 90 days following the termination of the covered member's active duty status.
- (7) Leave may be taken to attend counseling provided by someone other than a health care provider for oneself, for the covered military member or covered child provided the need for counseling arises from the active duty status or call to active duty status of a covered military member.
- (8) Leave may be taken to spend time with a covered military member who is on a short-term, temporary rest and recuperation leave during leave during the period of deployment. Eligible employees may take up to five (5) days of leave for each instance of rest and recuperation.
- (9) Leave may be taken to attend post-deployment activities for the covered military member for a period of ninety (90) days following the termination of the covered member's active duty status.
- (10) Leave may be taken to address issues that arise from the death of a covered military member while on active duty status.
- (11) Leave may be taken to address any other additional events that may arise out of the covered military member's active duty or call to active duty status provided the County agrees the leave shall qualify as an exigency and agrees to both the timing and the duration of such leave

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 for 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.

- (F) *Military caregiver leave (also known as covered service member leave) to care for an ill or injured service member.*

This leave may extend up to 26 weeks in a single 12-month period for an employee to care for a spouse, son, daughter, parent or next-of-kin covered service member with a serious illness or injury incurred in the line of duty on active duty. Next-of-kin is defined as the closest blood relative of the injured or recovering service member.

#### **IV. AMOUNT OF LEAVE**

An eligible employee can take up to 12 weeks for the FMLA circumstances **(A) through (E)** 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 workweeks for the FMLA circumstance **(F)** above (military caregiver leave) 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 26 weeks available.

- (1) The single 12-month period begins on the first day the eligible employee takes FMLA to care for the covered service member and ends 12 months after that date.
- (2) If an eligible employee does not take all of their 26 workweeks during this 12-month period, the remaining part of the 26 workweeks of leave entitlement to care for the covered service member is forfeited.
- (3) This leave entitlement is applied on a per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered service members or to care for the same covered service member with a subsequent serious illness or injury, except that no more than 26 workweeks may be taken within any single 12-month period.

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.

#### **V. EMPLOYEE STATUS AND BENEFITS DURING LEAVE:**

While an employee is on FMLA leave, Ector 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 an 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 for circumstances beyond the employee's control, Ector County will require the employee to reimburse Ector County the amount it paid for the employee's health insurance premium during the unpaid leave period.

**(A) *Insurance Premiums***

- (1) Under current Ector County policy, an employee pays for a portion of the employee's own health care premiums, as well as a portion of the health care premiums for the employee's family (dependent coverage). While on paid leave, Ector County will continue to make payroll deductions to collect the employee's share of the health care premiums for the employee and his or her dependents. While on unpaid FMLA leave, the employee must continue to make this payment for the employee's portion of health care premiums for the employee and his or her dependents, either in person or by mail. The payment must be received in the Ector County Treasurer's Office by the 5<sup>th</sup> day of each month. If the 5<sup>th</sup> day falls on a weekend or holiday, the payment will be due on the next business day. If the payment is more than 30 days late, the employee's dependent health care coverage may be dropped for the duration of the leave. The employer will provide 15 days' notification prior to the employee's loss of coverage.
- (2) If an employee contributes to a life insurance or disability plan, Ector County will continue making payroll deductions for these benefits while the employee is on paid leave. While on unpaid leave, the employee may request continuation of such benefits and must continue to make this payment, either in person or by mail. The payment must be received in the Ector County Treasurer's Office by the 5<sup>th</sup> day of each month. If the 5<sup>th</sup> falls on a weekend or holiday, the payment will be due on the next business day. If the payment is more than 30 days late, the employee's life insurance or disability coverage may be dropped for the duration of the leave.
- (3) If an employee does not continue making payments for insurance or disability coverage as provided above, Ector County may discontinue this coverage during the leave period. At its sole option, Ector County may continue the coverage. In this case Ector County may recover the payments at the end of the leave period from the employee in any manner authorized by law, whether or not the employee returns to work.
- (4) If an employee who is covered by the Ector County Health Benefit Plan either does not qualify for FMLA leave or has exhausted the entire FMLA leave to which he or she is entitled, then that employee shall be subject to the terms and conditions of the Benefit Plan listed under **WHEN COVERAGE ENDS**, "CEASING ACTIVE WORK" and "LIMITED CONTINUATION OF COVERAGE". These sections reference payment

of premiums by employee during absence beyond FMLA and under circumstances which qualify for COBRA.

While an employee is on paid leave, the employee shall continue to accrue vacation time and sick time at the same level and under the same conditions as if the employee were not on leave. An employee on unpaid leave shall not accrue vacation time, sick leave, or holiday leave. While on unpaid leave, an employee will not accrue seniority or eligibility for raises.

The employee's rights and credit towards his or her retirement shall be governed by the retirement system's rules. Each employee is responsible for determining his or her rights and credit towards retirement.

## **VI. EMPLOYEE'S 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 employer's response to the FMLA request. Generally, an employee who takes FMLA 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 which is virtually identical in terms of pay, benefits and working conditions.

Ector County will not use the taking of FMLA leave as a negative factor in employment actions. Taking of FMLA leave will not result in denial of promotions or disciplinary action.

If an employee is hired to perform work on a specific project or for a specific term, Ector County will not be required to restore the employee if the employment term or project is completed and Ector County would not have otherwise continued to employ the individual. Ector County shall not be required to reinstate an employee if the employee would not have otherwise been employed by Ector County when reinstatement is sought.

## **VII. USE OF PAID AND UNPAID LEAVE:**

An employee who is taking FMLA leave must use all paid leave prior to being eligible for unpaid leave. Of the accrued leave, comp time will be used first, with other paid leave to be used in this order: sick leave, vacation leave, emergency leave and holiday leave (will be taken by those employees who earn holiday leave). The remainder of the 12 or 26 weeks provided by FMLA will be taken as unpaid leave.

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

The employee may apply for leave from the Sick Pool if the reason for the FMLA leave is covered by the Sick Pool Policy and if approved, the Sick Pool time will run concurrently with the FMLA leave after all of the employee's other paid leave has been exhausted..

Disability leave, including workers' compensation leave (to the extent it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. An employee will not be required to use accrued sick, vacation, holiday or emergency leave for workers' compensation leave, with the exception of the first seven days.

An employee, who is using military FMLA leave for a qualifying exigency for a covered military member or using FMLA military caregiver leave for the care of a covered service member, must use all paid leave prior to being eligible for unpaid leave. Of the accrued leave, comp time will be used first, with other paid leave to be used in this order: sick leave, vacation leave, emergency leave and holiday leave (will be taken by those employees who earn holiday leave).

## **VIII. INTERMITTENT LEAVE OR 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).

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 of 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.

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 schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of that 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 agreement with the County before taking intermittent leave or working a reduced hour schedule.

Ector County will require certification of the medical necessity for intermittent or reduced schedule leave. Employees seeking intermittent leave or a reduced work schedule must attempt to schedule the leave so as not to disrupt the operations of Ector County and their department. Intermittent leave may not be taken in increments of less than one-quarter hour.

## **IX. CERTIFICATION OF THE SERIOUS HEALTH CONDITION:**

Ector County will require certification for the employee's serious health condition. 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 denial of continuation of leave. Medical certification will be provided using the DOL **Certification of Health Care Provider for Employee's Serious Health Condition Form (WH-380-E)** available in the Human Resources Department or online at (<http://www.dol.gov/esa/whd/forms/WH-380-E.pdf>).

The County may directly contact the employee's health care provider for verification or clarification purposes using a health care professional, an HR professional or benefits coordinator. 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 his/her physician to clarify 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. 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. 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.

## **X. CERTIFICATION FOR THE FAMILY MEMBER'S SERIOUS HEALTH CONDITION:**

The County will require certification for the family member's serious health condition. 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 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 Form (WH-380-F)** available in the Human Resources Department or online at (<http://www.dol.gov/esa/whd/forms/WH-380-F.pdf>).

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 or benefits coordinator. 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 his/her physician to clarify 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. 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. 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.

#### **XI. 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. Failure to provide certification may result in denial of continuation of leave. Medical certification will be provided using the DOL **Certification of Qualifying Exigency for Military Family Leave Form (WH-384)** available in the Human Resources Department or online at <http://www.dol.gov/esa/whd/forms/WH-384.pdf>.

#### **XII. 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. Failure to provide certification may result in denial of continuation of leave. Medical certification will be provided using the DOL **Certification for Serious Injury or Illness of Covered Service Member Form (WH-385)** available in the Human Resources Department or online at <http://www.dol.gov/esa/whd/forms/WH-385.pdf>.

#### **XIII. 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 and only when circumstances have changed significantly, or if the employer 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 six 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 the need for leave is consistent with the employee's serious health condition.

#### **XIV. PROCEDURE FOR REQUESTING FMLA LEAVE:**

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the Human Resources Director or the director's designee. Within five business days after the employee has provided this notice, the HR Director or the director's designee will complete and provide the employee with the DOL **Notice of Eligibility and Rights Form (WH-381)**.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the County's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

#### **XV. DESIGNATION OF FMLA LEAVE;**

Within five business days after the employee has submitted the appropriate certification form, the HR Director or the director's designee will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL **Designation Notice Form (WH-382)**.

#### **XVI. EMPLOYEE'S DUTIES DURING LEAVE:**

While on leave, employees are required to report periodically to their Department Head or Elected Official regarding the status of the medical condition, and their intent to return to work. Unless otherwise arranged with the Department Head or Elected Official, while on FMLA leave, employees must maintain weekly contact with the Department Head or Elected Official. Employees who fail to report periodically and fail to respond to questions regarding their status and intent to return may be deemed to have abandoned their positions as that term is defined in this Policy.

An employee may be engaged in outside employment with an entity in addition to his or her position with Ector County. However, outside employment while on FMLA leave may raise questions about the employee's ability to perform the essential functions of the employee's position and entitlement to leave for his or her own serious health condition. As a result, the employee may be required to obtain recertification of the employee's health condition, if that condition forms the basis for the leave request.

## **XVII. ABANDONMENT OF POSITION:**

- (A) Employees who fail to return to work after the maximum FMLA leave described in this Policy expires, shall automatically be separated for job abandonment unless:
1. (a) The employee has accrued paid leave in excess of the 12 week period; and
  - (b) The employee has told the employee's Department Head or Elected Official prior to the 12 week FMLA leave being exhausted that the employee will be taking additional accrued paid leave; or
  2. The employee's medical condition qualifies under the American's with Disabilities Act (ADA) and an extension of leave is required as an accommodation.
- (B) If an employee fails to return from unpaid FMLA leave for reasons other than:
1. the continuation of a serious health condition of the employee or a covered family member; or
  2. circumstances beyond the employee's control (certification required within 30 days of failure to return for either reason);
- the employee is required to reimburse Ector County for all medical premiums paid by Ector County on the employee's behalf during the period of leave.