

POLICY 405: FAMILY AND MEDICAL LEAVE

ADOPTED: MAY 11, 1994 (REVISED: JUNE 20, 2017)

Policy:

It is the policy of Lee County to grant its employees up to twelve (12) weeks leave of absence in any twelve (12) month period to be used in accordance with the provisions of the Family & Medical Leave Act (FMLA).

405:1 GENERAL

1. Employees who have been **employed** for at least one year (52 weeks – which need not be consecutive), *and* have **worked** at least 1,250 hours during the preceding twelve (12) month period are eligible for leave under the FMLA.

For employees who are not eligible for FMLA leave, the County will review business considerations and the individual circumstances involved. Any leave granted under these special conditions and circumstances would be non-FMLA leave that does not afford the protections granted to eligible employees by the Family & Medical Leave Act.

2. Family & Medical Leave Act requires that a total of twelve (12) weeks of unpaid leave be made available in any twelve (12) month period. The County requires that all applicable paid leave and compensatory time first be exhausted and counted towards the maximum amount of leave required under the law. The remainder of the leave period, if any, is unpaid.

An employee who has purchased the County's Short Term Disability (STD) benefit may use this benefit in lieu of using accrued sick and/or vacation leave after the seven (7) day elimination period.

Accrued sick leave may only be used in accordance with the County's Sick Leave Policy 401. (Example: For the medical condition of the birth mother or child.) Sick leave may not be used for Parental Leave.

405:2 REASONS FOR LEAVE & CONDITIONS/RESTRICTIONS

1. All employees who meet the applicable time-of-service requirements may be granted a combined total of twelve (12) weeks of leave, whether paid or unpaid, during the designated twelve (12) month leave period for the following reasons:
 - a) The birth of the employee's child and in order to care for the child;
 - b) The placement of a child with the employee for adoption or foster care;
 - c) To care for the employee's spouse, child or parent who has a serious health condition (the care of grandparents or in-laws is not covered under the FMLA); or
 - d) A serious health condition that renders the employee incapable of performing the functions of his/her job. To care for the employee's spouse, parent, child or next-of-kin who is a covered service member with a serious injury or illness sustained while on active duty. (Refer to Policy 405A – Military FMLA)

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- e) For a qualifying exigency when an employee's spouse, child or parent is called to active duty. (Refer to Policy 405A – Military FMLA)

Spouse – the husband or wife of the employee as defined or recognized under the laws of the State of Florida; and

Child or 'Son or Daughter' – the son or daughter of the employee that is biological, adopted, or foster child, a legal ward, or a child of a person standing *in loco parentis* who is (a) under eighteen (18) years of age or (b) eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability; and

Parent – the biological parent of an employee or an individual who stood *in loco parentis* to an employee when the employee was a child.

Note: Employees who have no biological or legal relationship with a child may nonetheless stand *in loco parentis* to the child and be entitled to FMLA leave. Human Resources in consultation with the County Attorney's Office shall make determinations regarding *in loco parentis* conditions and qualifications on a case-by-case basis. Reasonable documentation may be required.

2. Leave to be used for the birth or placement of a child for adoption or foster care must be taken within twelve (12) months from the date of the birth or placement. If the County employs both parents, they will be permitted to take a combined total of twelve (12) weeks of leave for the birth or placement of the child.
3. Family or medical leave may be taken as intermittent leave or leave on a reduced-schedule only if there is a **medical need** for such leave (as distinguished from voluntary treatments and procedures), and that such medical need can be **best** accommodated through an intermittent or reduced leave schedule.
 - a) An employee needing intermittent FMLA leave or leave on a reduced leave schedule must make a reasonable effort to schedule the leave so as not to disrupt the County's operations.
 - b) In addition, provisions of the Family & Medical Leave Act allow the employer to assign an employee to an alternate position with equivalent pay and benefits that better accommodates the employee's planned intermittent or reduced leave schedule. The employee will be returned to his/her original or similar position following this application of leave.
 - c) When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. The employer's agreement is not required, however, for leave during which the mother has a serious health condition or if the newborn child has a serious health condition.

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405:3 TRACKING & AVAILABILITY OF LEAVE

1. Effective September 1, 2009 Lee County uses a 12-month leave period measured forward from the date the employee first takes FMLA leave.
 - a) The first day FMLA is taken is the day that the leave year begins. After completion of 12 months from that date, the next 12 month period begins the next time the FMLA leave is used.
2. For ease of tracking intermittent leave, the twelve- (12) week entitlement may be equivalently defined in hours.
 - a) If an employee's schedule varies from week to week, a weekly average of the hours scheduled over the 12 months prior to the beginning of the leave period would be used for calculating the employee's normal workweek.
3. If an employee is not eligible to take FMLA leave, the department will notify the employee why he or she is not eligible.
4. FMLA leave will be tracked and notated on the employee's time sheet by the department. It shall be the responsibility of the department to inform an employee of the amount of FMLA leave available at the time leave is requested. The department shall inform the employee and the FMLA HR Representative when the end of the 12-week entitlement is nearing.
5. To the extent allowed by law, in the event an absence is for a reason covered by the FMLA, the County reserves the right to count it as family medical leave, whether the employee has applied for it or not. When this occurs, the employee will be promptly notified as required by law.

405:4 REQUEST FOR LEAVE

An employee requesting leave when the need for the leave is foreseeable should complete the County's "FMLA Leave Request Form" and return it to their immediate supervisor for sign-offs and further processing.

All fields should be completed on the leave request including whether the leave is a new or existing one; the type of leave being requested; the estimated duration of the leave; and, the starting and approximate ending dates of the leave (if known).

Medical information is confidential and is only retained by Lee County Employee Health Services and/or Risk Management in confidential files. If the information is not specific to a diagnosis or is simply stating the reasons listed above, that information is not considered confidential medical information. Human Resources, Risk Management and the HIPAA Privacy Officer are available to advise what information constitutes confidential medical information.

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405:5 NOTICE OF LEAVE

1. An employee intending to take family or medical leave due to an expected birth or placement of a child, or because of a planned medical treatment, must submit a leave request form at least thirty (30) days before the leave is to begin. Failure to provide this notice may postpone the leave.

If leave is to begin within thirty (30) days, an employee must give notice to his/her immediate supervisor and Human Resources as soon as the necessity for leave arises.

2. If the leave is not foreseeable, the employee may provide notice to their supervisor or Department designee by phone, fax or email. Medical details need not be given. The employee should provide enough information for the Department to understand that a serious health condition will create incapacity from the employee's job. If leave is to care for a family member information must be provided that the condition will render the family member unable to perform daily activities. The employee should include at least an estimate of how long they will be absent. Failure by the employee to provide sufficient information to determine whether FMLA is applicable may result in delay or denial of protected leave.
3. If the current absence relates to an already-approved FMLA condition, the employee must advise the Department at the time the leave is requested. Calling in "sick" without providing more information is not considered sufficient notice for that leave to be protected.
4. Normal Department call-in procedures for unscheduled absences should be observed unless an emergency situation is indicated.
5. If a supervisor learns of an event which can be reasonably foreseen to qualify as FMLA leave, the employee should be provided a Notice of Eligibility and Rights and Responsibilities and Certification paperwork within 5 business days. Following receipt of the completed and approved Certification paperwork a Designation Notice will be prepared by the department and sent to the employee. The Designation Notice informs the employee that the County has designated the leave as FMLA leave. The Department should prepare a "Report of Personnel Action" (RPA) to change the employee's employment status.
6. In general, the FMLA is not counted retroactively, however; if the County learns that leave is for an FMLA-qualifying purpose after leave has begun, the entire or some portion of the paid leave period may be retroactively counted as FMLA leave, to the extent that the leave period qualified as FMLA leave. Such determinations will be made in consultation with Human Resources.

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7. An employee may be absent from work due to an on-the-job illness or injury that also qualifies as a serious health condition under FMLA and still receive workers' compensation. In such cases, workers' compensation leave and FMLA leave will run concurrently. Human Resources, when necessary, shall make such determinations as to whether workers' compensation leave should be counted as FMLA leave. The employee's Department will notify the employee in writing that his/her workers' compensation leave is also being counted as FMLA leave when the condition qualifies as an FMLA covered condition.

If the workers' compensation leave is longer than the 12-week entitlement under FMLA, such leave will revert to the rules provided by workers' compensation laws and regulations.

405:6 MEDICAL CERTIFICATION OF LEAVE

1. A request for leave based on the serious health condition of the employee or employee's spouse, child, or parent will require a "Medical Certification Statement" completed by the applicable health care provider. This certification must be submitted to the Human Resources Employee Health Services. **Failure to complete and submit necessary FMLA paperwork may result in the denial of FMLA leave until such time as proper paperwork has been completed, received, and reviewed by the County.** The County may also request re-certifications periodically during the course of any FMLA leave, according to guidelines in the regulations.

Certification information will be kept confidential in the records of the Employee Health Services.

2. The Certification Forms provided by the County should be completed by the employee's/ family member's healthcare provider and must be returned to the Employee Health Services (EHS) within fifteen (15) days from the date that the request is made on the Notice of Eligibility and Rights & Responsibilities, unless the employee notifies Human Resources of extenuating circumstances. Failure to use the County's designated Certification Form may result in delay in approving protected leave, even if other information is submitted. If incomplete or insufficient information is received by EHS, the employee will be asked to obtain the missing information from the healthcare provider. Failure to provide Certification as requested will result in denial of protected leave.
3. Medical Certification is needed for a female employee (mother) in the case of FMLA leave being taken for the birth of a child. For adoption, foster placement, or for leave being taken by the male employee (father), proof of birth, adoption, foster placement should be provided as certification.
4. The County may request, at its own expense, second or third medical opinions regarding FMLA determination and periodic re-certifications of FMLA status. The Department will pay the cost of such opinions.

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405:7 BENEFITS COVERAGE DURING LEAVE

1. During a period of family or medical leave, an employee will be retained by the County health plan under the same conditions that applied before the leave commenced.
2. To continue health coverage, the employee must continue to make any contributions that he/she made to the plan prior to taking leave. Failure of the employee to pay his/her portion of the health insurance premium may result in the loss of coverage.
3. If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse the County for payment of health insurance premiums during any unpaid leave, unless the reason the employee fails to return is the presence of a serious health condition which prevents the employee from performing his/her job or to circumstances beyond the employee's control.
4. An employee is not entitled to the accrual of employment benefits that would have accrued if not for the taking of leave. However, an employee who takes family or medical leave will not lose any employment benefits that accrued before the date the leave began.

405:8 RESTORATION OF EMPLOYMENT

1. An employee eligible for family and medical leave – with the exception of those employees designated as “key employees” – will be restored to his/her old position *or* to a position with equivalent pay, benefits, and other terms and conditions of employment. The County cannot guarantee that an employee will be returned to his/her original position. The County will make a determination as to whether a position is an “equivalent position”. If an employee wishes to challenge this determination, he/she should contact Human Resources.
2. Pursuant to the FMLA, an employee may be denied restoration rights if:
 - a) The individual cannot perform the essential functions of the job, with or without accommodation;
 - b) The individual would pose a significant risk to the safety of other employees;
 - c) The employee's job was eliminated or he/she was laid off because of business conditions.

405:9 CONTACT/COMMUNICATION GUIDELINES

1. During FMLA leave, employees must periodically report on their medical status and intent to return to work. An employee must contact the immediate supervisor no less often than once every thirty (30) days; and, at any time that the need for FMLA has changed.

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2. The County is allowed to initiate reasonable communication with employees who are on an FMLA leave to discuss the employee's status and intent to return to work, with frequency depending on the circumstances but typically not more than once every thirty (30) days.
3. The County may request recertification of the need for FMLA leave as set forth in Policy 102.
4. The County, through a Human Resources representative or management official other than the employee's direct supervisor, may communicate with the employee's health care provider to authenticate or clarify a medical certification form that the provider has filled out. Before this occurs, the employee first will be allowed a period of seven (7) calendar days to fix the problem(s) with the certification form which, in the County's judgment, require authentication or clarification.

405:10 RETURN FROM LEAVE

1. An employee must notify the department and Human Resources of his/her intention to return from FMLA leave before he/she can be returned to active status.
2. If an employee wishes to return to work prior to the scheduled expiration of a family or medical leave of absence, notification must be given to the employee's supervisor at least five (5) working days prior to the employee's planned return.
 - Medical Evidence Upon Return to Work (Medical Clearance) – Except during the course of approved intermittent leave, all employees of the County whose FMLA leave was taken due to the employee's own serious health condition must obtain and provide to EHS certification from the employee's health care provider that the employee is able to resume work. This certification must be obtained **before** the employee will be allowed to return to work. The County will consider any reasonable accommodations to an ongoing condition as required by law.
3. The County reserves the right to request medical clearance from Intermittent Medical absences if reasonable safety concerns exist due to the approved FMLA condition. This request will be made only in consultation with Human Resources.
4. If at any point an employee gives notice that he/she will not be returning from FMLA leave, the supervisor should request a written resignation.

405:11 FAILURE TO RETURN FROM LEAVE

1. The failure of an employee to return to work upon the expiration of a qualifying FMLA leave will subject the employee to immediate termination unless a leave of absence is granted. (See Leave of Absence Policy 404.)

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405:12 RELATIONSHIP TO THE AMERICANS WITH DISABILITIES ACT

1. The Family & Medical Leave Act provides certain job protections and entitlements relating to the “serious health condition” of the employee and/or the employee’s immediate family. The Americans with Disabilities Act requires employers to make “reasonable accommodations” for individuals with qualifying disabling conditions. While the FMLA and the ADA seem to cover separate situations and operate exclusively from each other, supervisors must be aware that in practice there may be circumstances that present themselves in a way that may create difficulty in separating the two Acts.
2. The American with Disabilities Act requires that each case be handled on a case-by-case basis. If an employee requests a modified work schedule following a leave, as a result of an FMLA leave condition, or at any other time, the request must be evaluated to determine if it is a “reasonable accommodation” request falling under the ADA or simply an FMLA leave request.
3. Additional guidance may be provided by County Policy, the Department of Human Resources and/or the Office of Equal Opportunity.