



WAYNE COUNTY POLICY STATEMENT

Title:	FMLA Policy		
Wayne County Policy #		Date Issued:	6/1/2013
Category:		Date Revised:	N/A
Approved By:	Tish King, Director of Personnel/Human Resources (P/HR)		Page 1 of 12

I. PURPOSE

The purpose of this policy is to demonstrate Wayne County's support of a work environment that offers various solutions to the complex issues individuals face in balancing their work and family commitments. This policy is intended to be applied harmoniously with the applicable collective bargaining agreements, civil service rules, and/or other benefit plans.

II. POLICY PROVISIONS

A. Basic Leave Entitlement

The Family and Medical Leave Act (FMLA) allows eligible county employees to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of twelve (12) work weeks per rolling twelve (12)-month period for the following qualifying events:

- For incapacity due to pregnancy, prenatal medical care, or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform the employee's job.

A husband and wife who are eligible for FMLA and are each employed by Wayne County are limited to a combined total of twelve (12) weeks of leave during any twelve (12)-month period if the leave is taken for:

- the birth and care of newborn child;
- placement of a child with the employee for adoption or foster care; or
- caring for a spouse, child, or parent with a serious health condition.

Leave taken for the birth or placement of a child must be taken within one (1) year of the date of birth or placement.

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B. Military Leave Entitlement

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their twelve (12)-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings. Employees must complete a ***Certification of Qualifying Exigency for Military Family Leave*** form (WH-384).

FMLA also includes a special leave entitlement that permits eligible employees to take up to twenty-six (26) weeks of leave to care for a covered service member during a single twelve (12)-month period. A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retirement list. Employees must complete a ***Certification for Serious Injury or Illness of Covered Service member for Military Family Leave*** form (WH-385).

C. Employee Eligibility

An employee is eligible if he or she has worked for Wayne County for at least twelve (12) months and has 1,250 actual hours worked during the twelve (12)-month period immediately preceding the commencement of leave.

D. Employee Responsibilities When Requesting Leave

Employees must provide thirty (30) calendar days advance notice of the need to take FMLA leave when the need is foreseeable. When planning medical treatment, the employee must consult with the employer and make a reasonable effort to schedule the leave so as not to disrupt unduly the employer's operations, subject to the approval of the health care provider. If an employee requests intermittent leave and neglects to consult with the employer to make a reasonable attempt to arrange medical treatment so as not to unduly disrupt the employer's operations, the employer may initiate discussions with the employee and require the employee to attempt to make such arrangements, subject

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to the approval of the health care provider. If an employee fails to give thirty (30) calendar days notice for foreseeable leave with no reasonable excuse for the delay, Wayne County may delay the taking of FMLA leave until at least thirty (30) calendar days after the date the employee provides notice to the employer of the need for FMLA leave.

If the need for leave is not foreseeable, then it is expected that the employee will give notice to the employer within no more than two (2) working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible. The employee shall give sufficient information to make the employer aware that the employee needs FMLA-qualifying leave. Wayne County may inquire further of the employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and obtain the necessary details of the leave to be taken, which includes questions to determine if the leave is because of a serious health condition.

Requests must be submitted on a **Wayne County Leave of Absence Request** form (P/HR 164). If the employee is unable to submit a written leave request form within two (2) working days of learning of the need for leave, then the Leave Coordinator will initiate the leave request and the employee must sign and return a completed form within two (2) business days of the date the leave begins. Failure to return the standard leave form will result in a denial of FMLA leave.

Employees who know the requested leave is for an FMLA-qualifying event must specify that the leave is requested pursuant to the FMLA by checking the appropriate box. Employees must provide sufficient information for Wayne County to determine if the leave qualifies for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees must also inform Wayne County if the requested leave is for a reason for which FMLA leave was previously taken or certified.

Requests must include a completed **Certificate of Health Care Provider** form. The Certificate of Health Care Provider form to be used will be determined by the type of leave requested (i.e., for employee, family member, or military), and will be kept separately in a confidential manner. Failure of the employee to submit a completed Certificate of Health Care Provider form within fifteen (15) calendar days of the date the leave begins will result in a denial of FMLA leave. Where an employee submits an incomplete Certificate of Health Care Provider form, he/she will be allowed a reasonable amount of time to cure any such deficiency, but no more than **five (5)** business days.

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An employee who fails to provide completed FMLA forms as requested may not be protected by the FMLA; the employee will be subject to all applicable work rules and may be subject to discipline.

E. Employer Responsibilities

Wayne County informs an employee requesting leave whether he/she is eligible for FMLA leave through the ***Wayne County Notice of Eligibility and Rights & Responsibilities*** form (P/HR 381). This form notifies an employee if he/she is eligible and specifies any additional information required as well as the employee rights and responsibilities. This form also notifies the employee if he/she is not eligible and the reason for the ineligibility.

Wayne County also informs employees on Form P/HR 381 if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. The employee will also be notified if the leave is not FMLA-protected.

F. Definition of Serious Health Condition

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three (3) consecutive calendar days combined with at least two (2) visits to a health care provider or one (1) visit and a regimen or continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

G. Substitution of Paid Leave

Employees shall exhaust all accrued sick leave balances, as available, prior to going on unpaid leave, ***except***, if the leave qualifies under Wayne County's Workers' Compensation plan or Long-Term Disability plan, then exhaustion of leave shall be governed by those policies.

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An employee may choose to substitute annual, sick leave, or other accrued paid leave while taking FMLA leave. An employee may choose the order in which their accrued leave banks will be exhausted by designating such on the ***Leave of Absence Request*** form. Failure to designate the order of preference will result in sick leave accruals being exhausted first, then annual leave, and then other paid time accruals.

Whether leave is paid, unpaid, or a combination, only twelve (12) weeks of the leave shall be governed by the Family and Medical Leave Act within a rolling twelve (12)-month period.

Wayne County may designate paid or unpaid leave as FMLA leave, whether the employee designates it as such or not if all of the following apply:

- The Leave Coordinator has compelling information based on information provided by the employee that leave was taken for an FMLA-qualifying event; and
- The employee is properly notified of his or her FMLA rights.

Within two (2) business days of learning of the employee's need for FMLA-qualifying leave, the Leave Coordinator shall notify the employee:

- That paid leave will be designated and that it will count as FMLA leave; (The notice may be given orally, but must be confirmed in writing by the payday following the date leave is designated as FMLA leave. If the following payday is less than one (1) week from the date leave is designated as FMLA leave, the Leave Coordinator shall provide written notice to the employee by the next payday).
- Leave Coordinators shall at a minimum provide written notice to employees the first time they are granted FMLA leave in each six (6) month period of the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations (i.e., whether a medical or fitness-for duty certification will be required).

If leave has already begun, the notice will be mailed to the employee's address of record.

- Leave must be taken in increments of not less than 1/10 (six [6] minutes) of an hour

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H. Workers' Compensation and Long-Term Disability (LTD)

An employee on approved leave and receiving benefits under Wayne County's Workers' Compensation Plan or Long-Term Disability Plan shall have up to twelve (12) weeks of the approved benefit period, including any required waiting period, count concurrently as FMLA leave. The Leave Coordinator may also grant FMLA leave to an employee who is waiting for approval or rejection of Workers' Compensation or LTD. The granting of FMLA leave shall have no effect on the approval or rejection of an employee request for Workers' Compensation or LTD leave.

I. Intermittent FMLA Leave

An employee is entitled to take intermittent leave or leave on a reduced leave schedule for the employee's serious health condition or due to the serious health condition of a parent, spouse, son or daughter, or qualifying exigencies. Intermittent leave means leave taken in separate periods of time due to a single illness or injury, rather than for one (1) continuous period of time, and may include leave of periods of an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six (6) months, such as for chemotherapy. Reduced leave schedule means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

For intermittent leave or leave on a reduced leave schedule, there must be a medical need for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule.

An employee needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule his/her leave so as not to disrupt the employer's operations. In addition, Wayne County may assign an employee to an alternate position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

To be entitled to intermittent leave, the employee must submit certification to establish the medical necessity of the leave (e.g., periodic testing and treatments). In reviewing the request, the Leave Coordinator shall determine whether or not an acceptable leave schedule can be arranged and may consider a temporary transfer to an alternative, comparable position.

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The Leave Coordinator may require an employee to provide recertification of the medical necessity for intermittent leave no more than once every thirty (30) calendar days in conjunction with the employee's absence, and where the minimum period specified on the medical certification is more than thirty (30) calendar days, not until that minimum period has passed unless:

- the employee requests an extension of leave;
- circumstances described by the previous certification have changed significantly (e.g., the duration of the illness, the nature of the illness, complications); or
- Wayne County receives information that casts doubt upon the continuing validity of the certification.

Wayne County may grant employees intermittent leave for the birth or placement of a child. Intermittent leave for the birth or placement of a child shall be upon approval of the Leave Coordinator and P/HR. An employee should request such leave from his/her Leave Coordinator.

J. EMPLOYEE BENEFITS

During any FMLA leave, Wayne County will maintain group health plan benefits for the employee on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA period.

If an employee chooses not to continue health care coverage during FMLA leave, the employee will be entitled to reinstatement into the benefit plan upon return to work.

Wayne County may seek reimbursement for any health insurance premiums paid on behalf of the employee if the employee fails to return to work from FMLA leave. Wayne County may not seek reimbursement if the reason for the employee failing to return to work is due to the continuation or recurrence of the serious health condition or is otherwise beyond the employee's control as defined in the FMLA.

If, pursuant to a collective bargaining agreement, an employee would be eligible to receive bonus annual leave days for not taking more than a specified number of sick leave days on the day before a FMLA-qualifying leave begins, then he/she remains eligible to

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receive bonus annual leave days upon his/her return from the FMLA-qualifying leave. This provision only applies for sick leave taken for FMLA-qualifying purposes.

K. Medical Certification

For every FMLA leave request where an employee requires leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that make the employee unable to perform one or more of the essential functions of the employee's job, or a qualifying military family leave, the employee must provide a certificate of health care provider to support the FMLA leave request. (Forms: WH-380E, WH-380F, and WH-385). Failure to provide medical certification within at least fifteen (15) calendar days from the date the leave is to begin will result in a denial of FMLA leave.

In addition to the certification required with a request for leave that qualifies as a serious health condition, Wayne County may require authentication and/or a clarification of the information contained in the Certificate of Health Care Provider form. (Form WH-380E or WH-380F). Where clarification is necessary, the Wayne County FMLA Coordinator or designee may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification. An employee who refuses Wayne County's FMLA Coordinator permission to seek authenticity or clarification may be denied approval for FMLA leave.

Where an employee submits an incomplete Certificate of Health Care Provider form, he/she will be allowed a reasonable amount of time to cure any such deficiency, but no more than **five (5)** business days.

Where Wayne County has reason to doubt the validity of the medical certification, Wayne County may require the employee to obtain a second opinion from a second health care provider designated by and paid for by the county. Requests for second and third opinions must be submitted to P/HR for approval.

If the first and second opinions conflict, Wayne County may require the employee to submit to a third examination at the county's expense by a health care provide chosen jointly by the employee and Wayne County. In choosing the third health care provider, both the employee and the county must be reasonable and act in good faith. The opinion of the third health care provider is final and binding.

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L. Medical Recertification

Wayne County may require an employee to report his/her health status (recertify) no more than once every thirty (30)-calendar days, unless:

- The employee requests an extension of leave;
- Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of absences, the severity of the condition or complications); or
- Wayne County receives information that casts doubt upon the employee's stated reason for the absence.

At the employee's expense, the employee must provide the requested recertification to Wayne County within fifteen (15) calendar days after the recertification request is made. Failure to provide medical certification within at least fifteen (15) calendar days from the date the leave is to begin will result in a denial of FMLA leave.

M. Return to Work and Reinstatement

Wayne County requires an employee to report periodically on the employee's status and intent to return to work. Wayne County requires an employee attempting to return to work from an FMLA-qualifying leave to provide, at his/her expense, a fitness-for-duty certification which certifies that the employee is able to perform the essential functions of his/her job.

Wayne County may require authentication of and/or a clarification of the information contained in the certificate of health care provider form. (WH-380E/WH-380F) Where clarification is necessary, the Wayne County Benefits Coordinator or designee may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the fitness-for-duty certification. An employee who refuses Wayne County's health care provider permission to seek authenticity or clarification may be denied reinstatement.

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

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If the same job is not available, P/HR will determine in which similar position the employee should be placed, making sure that the position has equivalent pay, benefits and conditions of employment.

An employee whose leave is due to his/her own serious health condition shall provide certification from a health care provider that he/she is able to perform the essential function of his/her job.

N. Recordkeeping

P/HR or Payroll offices will maintain records of leave balances and FMLA leave usage.

Medical records accompanying FMLA requests will be kept separate from personnel files in a confidential manner.

O. Employee Fraud

An employee who fraudulently obtains FMLA leave from an employer is not protected by FMLA's job restoration or maintenance of health benefits provisions and will be subject to disciplinary action up to and including termination from Wayne County employment, as well as any other applicable laws.

P. Unlawful Acts by Employer

FMLA makes it unlawful for any employer to:

- Interfere with, restrain, or deny the exercise of any right provided under FMLA;
- Discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer. FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

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III. ENFORCEMENT

P/HR is responsible for development, revision, communication, and enforcement of this policy. P/HR will assist in the interpretation and monitoring of adherence to this policy.

Violation of this policy may result in remedial action ranging from verbal to written discipline, suspension from work without pay, to immediate termination.

IV. DISCLAIMER

If in direct conflict with other internal or departmental policy, this policy will be considered to be the overriding policy unless otherwise directed by the Director of Personnel/Human Resources or his/her designee.

In the event that any provision of these policies is in conflict with the terms and conditions of existing collective bargaining agreements (CBA), the terms and conditions of the agreements shall take precedence. On those topics where the CBA is silent, the provisions of these policies shall apply.

V. RELATED DOCUMENTS

- Family and Medical Leave Act
- US Department of Labor Federal Regulations
- Wayne County Leave of Absence Request Form (P/HR 164)
- Certificate of Health Care Provider Form (WH-380E, WH-380F, WH-385)
- Wayne County Notice of Eligibility and Rights and Responsibilities Form (P/HR 381)
- Wayne County Long-Term Disability Plan
- State of Michigan Workers' Compensation Act
- ADA

VI. REVISION HISTORY

ACTION	DATE	BY WHOM	REASON
Issued			New Policy
Revised	6/1/2013	Tish King, Director P/HR	Policy Update

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