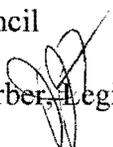


ACTION

MEMORANDUM

September 18, 2009

TO: County Council

FROM: Justina J. Ferber,  Legislative Analyst

SUBJECT: Executive Regulation No. 7-09, *Military Family Leave and Other Family & Medical Leave Amendments to the 2001 Montgomery County Personnel Regulations*

The Management and Fiscal Policy (MFP) Committee unanimously recommends approval of Executive Regulation No.7-09 as submitted, which amends Section 19 of the Personnel Regulations.

The Management and Fiscal Policy (MFP) Committee considered the Executive's proposed amendments to Montgomery County Personnel Regulations (MCPR) on September 14, 2009. Executive Regulation No. 7-09, *Military Family Leave and Other Family and Medical Leave Amendments*, amends Section 19 of the Personnel Regulations to include military family leave entitlements provided under federal law as part of the National Defense Authorization Act of 2008. The changes also reflect the final rule issued by the U.S. Department of Labor in 2008, which covers the new military family leave, as well as updates and clarifies Family Medical Leave Act (FMLA) regulations. This 26 week leave entitlement extends FMLA job-protected leave beyond the current 12 weeks of FMLA leave.

The Executive's transmittal memorandum notes that the regulation was advertised in the April 2009 issue of the Montgomery County Register and advises that no comments were received. The Merit System Protection Board reviewed the proposed amendments and has no objections (see ©48).

The Executive's transmittal memorandum is on ©2-4. The bracketed and underlined copy of the proposed regulation as submitted by the Executive is included on ©5-18. A clean copy is included on ©19-31 and also attaches personnel forms related to the new regulations at ©32-47. A fiscal impact statement advising of no fiscal impact is on circle ©49.

Committee member Ervin expressed concern about possible fiscal impacts, specifically the cost of temporary assistance to replace employees who are on extended leaves of absence. She recommended that OHR do an analysis of the potential number of employees who might use the 26 weeks of FMLA and the cost of hiring temporary replacements. Representatives of OHR responded that it was difficult to predict which employees might have a need to use the extended FMLA. It was noted that employees would not be receiving additional leave, but would have the ability to use their current annual leave, sick leave, and leave without pay for the extended leave. Because there is no additional leave granted and no one has inquired or used the extended leave since its implementation in early 2008, OMB believes there is no fiscal impact. Councilmember Ervin suggested that an estimate of potential users should be included in the fiscal impact analysis and information about the lack of inquiries and use should also be included.

AMENDMENTS

The amendments to various sections of the MCPR are discussed below.

SECTION 19-1. DEFINITIONS.

This section amends the definition of a “serious health condition”, adding new language regarding what constitutes “continuing treatment” for a period of incapacity or a chronic condition. The treatment two or more times by a health care provider must take place within a 30-day period, absent extenuating circumstances. The first treatment must take place within 7 days of the first day of incapacity and the need for a second treatment must be determined by the health care provider and not the employee or patient. For chronic conditions requiring periodic visits for treatment, such visits must take place at least twice a year.

SECTION 19-3. ELIGIBILITY FOR FMLA LEAVE.

This change clarifies that when determining whether an employee has a total of 12 months of County employment, past employment going back seven years may be considered.

SECTION 19-4. AMOUNT OF FMLA LEAVE.

This change clarifies that a supervisor must not count time that an employee spends performing light duty work as FMLA leave.

SECTION 19-6. AUTHORIZED REASONS FOR USING FMLA LEAVE.

This change includes providing psychological comfort and reassurance to a relative.

SECTION 19-7. APPLICATION FOR FMLA LEAVE AND NOTICE REQUIRED OF EMPLOYEE.

This change requires an employee who could not foresee the need to use leave for an FMLA purpose to give notice to the supervisor as soon as possible and follow the department's usual and customary call-in procedures for reporting an absence, absent unusual circumstances. It deletes the requirement that an employee must notify a supervisor within two working days after beginning to use leave.

SECTION 19-9. USE OF FMLA LEAVE.

This change specifies that a supervisor *may* (rather than *should*) require the employee to submit a Certification of Serious Health Condition form to support a request for leave. The amendments also delete an itemized list of circumstances under which the supervisor should request this certification, such as when the supervisor has a reason to suspect misuse or abuse of leave or the leave, if approved, would cause a hardship for the work unit or other employees. Council staff expressed concern that giving supervisors this type of discretion may lead to inequitable treatment of employees who request leave, requiring some employees to provide certification and not requiring it of others. **Committee Chair Trachtenberg asked OHR representatives whether any oversight or other protections exist to help ensure uniformity of application. OHR representatives felt that this was not a concern because supervisors currently practice discretion in a number of similar situations and no issues of uneven application have arisen.**

SECTION 19-11. USE OF MILITARY FAMILY LEAVE.

This new section adopts the new federal regulations providing up to 26 workweeks of leave to care for a service member with a serious illness or injury that was incurred in the line of duty while on active duty. This 26 week leave entitlement extends FMLA job-protected leave beyond the current 12 weeks of FMLA leave.

This section also outlines the circumstances under which an employee may use all or part of their normal 12 weeks of FMLA leave per year to handle any "qualifying exigency" directly related to a close family member's active duty status or call to active duty. The U.S. Department of Labor's final rule defines "qualifying exigency" by referring to a number of broad categories for which employees may use FMLA leave, including: (1) short-notice deployment; (2) military events and related activities; (3) childcare and school activities; (4) financial and legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; and (8) additional activities not included in the other categories, but agreed to by the employer and employee.

APPENDICES TO REGULATIONS

New forms are included for Medical Certification of Employee's Serious Health Condition (Appendix P-1), Medical Certification of Family Member's Serious Health Condition (Appendix P-2), Certification of Qualifying Exigency Military Family Leave (Appendix S), Certification for Serious Injury or Illness of Covered Service member for Military Family Leave (Appendix T), and Employee Request for FMLA (Appendix U). The forms are at ©32-47.

This packet contains:

circle #

| | |
|---|-------|
| Resolution | 1 |
| Transmittal Memorandum | 2-4 |
| Regulation 7-09, bracketed and underlined | 5-18 |
| Regulation 7-09, clean copy and personnel forms | 19-47 |
| Merit System Protection Board Letter | 48 |
| Fiscal Impact Statement | 49 |

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Resolution No.: _____
Introduced: _____
Adopted: _____

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

Subject: Approval of Executive Regulation 7-09, Military Family Leave and Other Family & Medical Leave Amendments to the 2001 Montgomery County Personnel Regulations

Background

1. On June 22, 2009, the County Council received Executive Regulation 7-09 to amend Section 19 of the Personnel Regulations to include military family leave entitlements provided under federal law and to reflect the final rules issued by the U.S. Department of Labor which covers the new military family leave, as well as updates and clarifies Family Medical Leave Act (FMLA) regulations.
2. Executive Regulation 7-09 is processed under Method 1, and is not adopted until the County Council approves it.
3. The proposed amendments were advertised in the April 2009 Montgomery County Register and no comments were received. The Merit System Protection Board reviewed the proposed amendments and has no objections.
4. The Management and Fiscal Policy Committee reviewed Executive Regulation 7-09 on September 14, 2009, and recommended approval as submitted

Action

The County Council for Montgomery County, Maryland approves the following resolution:

Executive Regulation 7-09, Military Family Leave and Other Family & Medical Leave Amendments to the 2001 Montgomery County Personnel Regulations, is approved.

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council

Exec Regs



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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

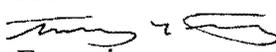
Isiah Leggett
County Executive

MEMORANDUM

June 22, 2009

Method 1

TO: Phil Andrews, President
Montgomery County Council

FROM:  (ACTING)
Isiah Leggett, County Executive

SUBJECT: Executive Regulation No. 7-09, Military Family Leave and Other Family and Medical Leave Amendments to the 2001 Montgomery County Personnel Regulations

2009 JUN 22 AM 11:23

ROCKVILLE MARYLAND
COUNTY COUNCIL

I am submitting Executive Regulation No. 7-09 for the Council's review and approval. This regulation amends Section 19 of the Personnel Regulations to encompass new military family leave entitlements included in amendments to the Family and Medical Leave Act of 1993 (FMLA) enacted as part of the National Defense Authorization Act for FY 2008 that was signed into law by President Bush on January 28, 2008. The changes in this regulation also reflect the final rule issued by the U.S. Department of Labor on November 17, 2008, which covers the new military family leave and also updates and clarifies its FMLA regulations.

The new law allows workers with a family member serving in the Armed Forces to take up to 26 weeks of leave in a "single 12-month period" to care for a servicemember with a serious illness or injury incurred in the line of duty while on active duty. This 26 week leave entitlement extends FMLA job-protected leave beyond the normal 12 weeks of FMLA leave. This provision extends FMLA protection to additional family members (i.e. next of kin) beyond those who may take FMLA leave for other qualifying reasons. The new law also allows eligible employees to use all or part of their normal 12 weeks of FMLA leave per year to handle any "qualifying exigency" directly related to a close family member's active duty status or call to active duty. The Labor Department's final rule defines "qualifying exigency" by referring to a number of broad categories for which employees can use FMLA leave: (1) Short-notice deployment; (2) Military events and related activities; (3) Childcare and school activities; (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

The proposed Executive Regulation includes the following changes and

clarifications contained in the final rule issued by the Department of Labor:

- Clarifies that for purposes of FMLA eligibility in determining whether an employee has at least 12 months of employment with the employer if past and present employment is combined, past employment goes back 7 years.
- Clarifies that supervisors must not count time that an employee spends performing light-duty work as FMLA leave.
- Clarifies that the scope of “caring for” an eligible family member is broad and includes “providing psychological comfort and reassurance.”
- Clarifies that the term health care provider includes “physician assistant.”
- Changes the employee notice requirement for use of FMLA leave by deleting the language “or within 2 working days after the employee begins to use leave” and clarifies that an employee must follow the [employer’s] usual and customary call-in procedures for reporting an absence, absent unusual circumstances.”
- In connection with the definition of “serious health condition” there is new language regarding what constitutes “continuing treatment” for a period of incapacity or a chronic condition. The treatment 2 or more times by a health care provider must take place within a 30-day period, absent extenuating circumstances. Also, the first treatment must take place within 7 days of the first day of incapacity and the need for a second treatment must be determined by the health care provider and not the employee or patient. For chronic conditions requiring periodic visits for treatment, such visits must take place at least twice a year.
- There is new language in the definition of parent that includes “adoptive, step or foster mother or father.”
- Extends the time period for a supervisor to respond to an employee’s request for FMLA leave from 2 to 5 working days.
- Provides for use of separate forms for Medical Certification of Employee’s Serious Health Condition (Appendix P-1) and Medical Certification of Family Member’s Serious Health Condition (Appendix P-2).
- Provides forms for applying for military family leave for a qualified exigency (Appendix S) and military caregiver leave (Appendix T).

Currently under Section 19-7(a) of the Personnel Regulations, Application for FMLA leave, an employee must apply for FMLA leave “under the procedures applicable to the particular type of leave requested.” There is no FMLA application form. This has resulted in a great deal of confusion among County employees and supervisors on what information the

employee needs to provide for the supervisor to determine if the leave request qualifies for FMLA. Accordingly, we have created a simple, one page Employee Request for FMLA Leave Form for an employees to complete and submit to their supervisor (Appendix U). This will provide uniformity and consistency.

The other significant change relates to Section 19-9(b)(2) and whether a supervisor should require an employee to submit a medical certification form. Some of the reasons for requiring a medical certification listed in the current regulations such as 19-9(b)(2)(D), approval of the requested leave would cause a hardship for the work unit or other employees, is at odds with the purposes of the FMLA statute. The proposed change would give the employee's supervisor discretion on whether to require an employee to submit a medical certification form to support a request for leave for a serious health condition.

Executive Regulation No. 7-09 was advertised in the April 2009 issue of the *Montgomery County Register*. No comments were received in response to this advertisement. The proposed regulation has been reviewed by the Merit System Protection Board and the Board has no objection to it. A fiscal impact statement for the regulation is also included.

Should you have any questions about Executive Regulation No. 7-09, please contact Stuart Weisberg, the Labor Relations Advisor in the Office of Human Resources, at (240) 777-5154.

IL:sw

Attachments



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

| | |
|--|-----------------------|
| Subject Military Family Leave and Other Family and Medical Leave Amendments to the 2001 Montgomery County Personnel Regulations | Number 7-09 |
| Originating Department Office of Human Resources | Effective Date |

Military Family Leave and Other Family and Medical Leave Amendments to the 2001 Montgomery County Personnel Regulations

Executive Regulation No. 7-09

Issued by: County Executive

Supersedes: Executive Regulation No. 12-00AMII, in part

Authority: Montgomery County Code, 2004, §33-7(b)

Council review: Method 1

Montgomery County Register Volume 26, Issue 4

Comment deadline: April 30, 2009

Effective date: _____

Summary: This regulation amends Section 19 of the 2001 Montgomery County Personnel Regulations to encompass new military family leave entitlements included in amendments to the Family and Medical Leave Act of 1993 (FMLA) enacted as part of the National Defense Authorization Act for FY 2008 that was signed into law by President Bush on January 28, 2008. The changes in this regulation also reflect the final rule issued by the U.S. Department of Labor on November 17, 2008, updating and clarifying its FMLA regulations.

Address for comments Office of Human Resources, Executive Office Building, 7th Floor
101 Monroe Street, Rockville, Maryland 20850

Staff contact: Stuart Weisberg, 240-777-5051, or stuart.weisberg@montgomerycountymd.gov

Please use the key below when reading this regulation:

- | | |
|------------------------------|---|
| Boldface | <i>Heading or defined term.</i> |
| <u>Underlining</u> | <i>Added to existing regulation by proposed regulation.</i> |
| [Single boldface brackets] | <i>Deleted from existing regulation by proposed regulation.</i> |
| <u>Double underlining</u> | <i>Added by amendment.</i> |
| [[Double boldface brackets]] | <i>Deleted from existing or proposed regulation by amendment.</i> |
| * * * | <i>Existing language unchanged by executive regulation.</i> |



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SECTION 19. FAMILY AND MEDICAL LEAVE

19-1. Definitions.

- (a) **Active duty or call to active duty status:** Military duty under a call or order to active duty (or notification of an impending call or order to active duty) as a member of the National Guard or state militia, a member of a reserve component of the Armed Forces of the United States, or as a retired member of the Armed Forces or the Reserve under certain sections of Title 10 of the United States Code identified and discussed in 29 CFR Sec. 825.126(b)(2).
- (b) **Contingency operation:** A military operation designated by the Secretary of Defense as one in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.
- [(a)]
- (c) **Daughter or son:** An employee's biological, adopted, or foster child, stepchild, domestic partner's child, legal ward, or child for whom the employee stands in loco parentis and [who is]:
 - (1) for purposes of regular family leave:
 - (i) who is under 18 years of age, or
 - (ii) 18 years of age or older and incapable of self-care because of a mental or physical disability at the time leave is to begin;
 - (2) who is of any age for purposes of military family leave:
- (d) **Extenuating circumstances:** Circumstances that prevent the follow-up visit from occurring as planned by the health care provider (e.g., if a health care provider determines that a second in-person visit is needed within the 30-day

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period, but the health care provider does not have any available appointments during that time period).

[(b)]

(e) **Health care provider:** A doctor of medicine or osteopathy who is authorized to practice medicine or surgery, as appropriate, by the State in which the doctor practices or another person capable of providing health care services, such as a podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse practitioner, nurse midwife, clinical social worker, physician assistant, or Christian Science practitioner.

(f) **Next of kin:** The nearest blood relative other than the covered servicemember's spouse, domestic partner, parent, son, or daughter, in the following order of priority unless the servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under FMLA:

- (1) blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions;
- (2) brothers and sisters;
- (3) grandparents;
- (4) aunts and uncles; and
- (5) first cousins.

[(c)]

(g) **Parent:** The biological, [or legal parent] adoptive, step or foster mother or father of an employee or an individual who stands or stood in loco parentis to the employee when the employee was a child.

[(d)]

(h) **Serious health condition:**



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(1) an illness, injury, impairment, or physical or mental condition that involves one of the following:

* * *

(D) a chronic condition that:

- (i) requires [periodic] visits at least twice a year for treatment by a health care provider or by a nurse or physician's assistant under the direct supervision of a health care provider; [and]
- (ii) continues over an extended period of time [or causes] (including recurring episodes of a single underlying [the] condition [(e.g. asthma, diabetes, or epilepsy)]); or
- (iii) may cause episodic incapacity rather than a continuing period of incapacity (e.g., asthma, diabetes, or epilepsy).

* * *

(2) The following terms used in the definition of "serious health condition" are defined as follows:

(A) **Absence plus treatment:** A period of incapacity of more than 3 consecutive full calendar days, [including] and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

- (i) treatment 2 or more times by a health care provider, by a nurse, or physician's assistant under the direct supervision of a health care provider, or by a provider of health care services such as a physical therapist under orders of, or on referral by, a health care provider, within 30 days of the beginning of the period of incapacity, unless extenuating

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circumstances exist, (with the first treatment taking place within 7 days of the first day of incapacity and the need for a second treatment being determined by the health care provider and not the employee or patient); or

(ii) treatment by a health care provider on at least one occasion, within 7 days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider.

(B) **Continuing treatment by a health care provider:**

Treatment 2 or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider or by a provider of health care services under the direct supervision of a health care provider or treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of a health care provider.

* * *

(F) **Treatment:** Includes but is not limited to an in-person visit to a health care provider for an examination to determine if a serious health condition exists or evaluation of a condition but does not include a routine physical, eye, or dental examination.

19-2. Intent under FMLA. It is the County's intent that this section be:

(a) used to implement the FMLA of 1993, as amended; and

* * *

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19-3. Eligibility for FMLA leave. An employee is eligible to use FMLA leave if the employee:

- (a) has a total of at least 12 months of County employment, if past (going back 7 years) and present County employment are combined;

* * *

- (d) provides medical certification, if requested, as described in Section 19-9(b)(2), [if requested;] or as described in Section 19-12(b), if applicable, and

* * *

19-4. Amount of FMLA leave.

* * *

- (d) A supervisor must not count time that an employee spends performing light duty work as FMLA leave.

* * *

19-6. Authorized reasons for using FMLA leave. An eligible employee may use FMLA leave for any of the following reasons:

* * *

- (d) to care for, which may include providing psychological comfort and reassurance, or arrange care for, any of the following with a serious health condition: the employee's spouse, domestic partner, parent, daughter, or son; [or]
- (e) because of the employee's serious health condition that makes the employee unable to perform the essential function of the employee's position[.];
- (f) to handle an exigency arising from the employee's spouse, domestic partner, parent, daughter, or son serving on active duty under a call or order or being notified of an impending call or order to active duty in support of a contingency operation as described in Section 19-11(b); or

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(g) to care for the employee's spouse, domestic partner, parent, daughter, son, or next of kin on active duty with a serious injury or illness incurred in the line of duty as described in Section 19-11(a).

19-7. Application for FMLA leave and notice required of employee.

(a) **Application for leave.** An employee must apply for FMLA leave [under the procedures applicable to the particular type of leave requested] by completing a County *Employee Request for FMLA Leave Form* (Appendix U) and submitting the form to the employee's supervisor.

(b) **Notice required of employee.**

* * *

(3) if an employee could not foresee the need to use leave for an FMLA purpose, the employee must give the supervisor notice as soon as possible [or within 2 working days after the employee begins to use leave] and must follow the department's usual and customary call-in procedures for reporting an absence, absent unusual circumstances.

19-8. Supervisor's responsibility for designating leave as FMLA leave.

(a) **Supervisor's initial designation of leave.**

* * *

(3) A-supervisor must designate leave as FMLA leave within [2] 5 working days after an employee requests leave for an FMLA purpose.

* * *

(c) **Information that a supervisor must give to an employee.** Within [2] 5 working days after an employee requests leave for an FMLA purpose, the supervisor must inform the employee of:

* * *

19-9. Use of FMLA leave.

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* * *

(b) *FMLA leave taken for a serious health condition.*

* * *

(2) A supervisor [should] may require an employee to submit a [County] County Medical Certification of [Health Care Provider] Employee's Serious Health Condition Form (Appendix P-1) or a County Medical Certification of Family Member's Serious Health Condition Form (Appendix P-2) to support a request for leave for a serious health condition[, if:

- (A) the supervisor has a reason to suspect the employee of leave misuse or abuse;
- (B) the supervisor is not familiar with the employee;
- (C) the employee requests the leave on a holiday or at a time when the employee would usually not be able to use leave; or
- (D) approval of the requested leave would cause a hardship for the work unit or other employees].

* * *

19-11. Use of military family leave.

(a) **Use of FMLA leave to care for a servicemember with a serious injury or illness.**

- (1) An eligible employee whose spouse, domestic partner, parent, son, daughter, or next of kin is a current member of the Armed Forces, including a member of the National Guard or Reserves, may use up to 26 workweeks of leave to care for the servicemember, if the servicemember:
 - (A) has a serious injury or illness that was incurred in the line of duty while on active duty; and is



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- (B) (i) undergoing medical treatment, recuperation, or therapy;
- (ii) otherwise in outpatient status; or
- (iii) otherwise on the military temporary disability retired list.

(2) The up to 26 workweeks of leave under Section 19-11(a)(1) must be taken by the employee during a single 12-month period. The leave period begins on the first day the employee takes leave to care for a covered servicemember and ends 12 months after that date.

(3) If an employee does not take all of the 26 weeks of military caregiver leave during the applicable single 12-month period, the balance is forfeited and no-carryover is permitted.

(4) After the single 12-month period expires, the employee is eligible for another 26 weeks of military caregiver leave during a subsequent single 12-month period to care for a different covered servicemember or to care for the same covered servicemember if that person incurs a different serious injury or illness.

(5) Leave to care for a covered servicemember with a serious injury or illness under Section 19-11(a) may be taken continuously, intermittently, or on a reduced schedule basis.

(6) An employee is entitled to a combined total of 26 workweeks of military caregiver leave and leave for any other FMLA-qualifying reason, provided that the employee may not take more than 12 workweeks of leave for any other FMLA-qualifying reason during the calendar year.

(b) **Use of FMLA leave to handle exigencies directly related to a close family member's active duty status or call to active duty.**

(1) An eligible employee whose spouse, domestic partner, son, daughter, or parent has been called or ordered to active duty or has been notified of an



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impending order to active duty may use up to 12 workweeks of leave because of any of the following qualifying reasons:

- (A) to deal with an issue that arises because of a short-notice deployment when a military member is notified of an order to active duty with 7 or less calendar days of notice of the deployment;
- (B) to attend a military event or related activity, such as an official ceremony, program, or event sponsored by the military, a family support or assistance program, or an informational briefing sponsored or promoted by the military, military service organizations, or the American Red Cross;
- (C) to deal with an issue concerning childcare or school activities that arise from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis), enrolling in or transferring to a new school or day care facility, or attending a meeting with staff at a school or daycare facility;
- (D) to make a financial or legal arrangement, such as preparing or executing a financial or healthcare power of attorney, preparing or updating a will or living trust, transferring a bank account signature authority, or obtaining a military identification card;
- (E) to obtain counseling, such as attending a counseling session provided by someone other than a healthcare provider;
- (F) to spend time with a covered military member who is on short term temporary leave for rest and recuperation while on active duty;



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- (G) to participate in a post-deployment activity, such as attending an arrival ceremony, reintegration briefing, or any other official ceremony or program sponsored by the military within a period of 90 days after the end of the military member's active duty status;
- (H) to address issues that arise from the death of a covered military member while on active duty status; and
- (I) to deal with any other event that arises out of the covered service member's active duty or call to active duty status if the employer and employee agree:
 - (i) that the event qualifies as an exigency, and
 - (ii) on both the timing and duration of the leave.

- (2) An employee may use leave to deal with an issue arising from a service member's short-notice deployment for no more than 7 calendar days after receiving the notice of deployment.
- (3) An employee may use leave to spend time with a covered military member who is on short term temporary leave for rest and recuperation while on active duty for no longer than 5 days for each instance.
- (4) A supervisor must count all hours of leave that an employee uses to handle issues arising from a close family member's being called or ordered to active duty military service against the employee's FMLA entitlement of 12 weeks in a leave year.

19-12. Application for military family leave.

- (a) **Application for leave for a qualified exigency.** A supervisor may require an employee requesting FMLA leave due to a qualifying military exigency to submit a County *Certification of Qualifying Exigency For Military Family Leave Form* (Appendix S). The certification should include the following information:

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- (1) a statement signed by the employee describing the nature and details of the specific exigency, the amount of leave needed, and the employee's relationship to the military member;
- (2) a copy of the covered military member's active duty orders;
- (3) a description of the facts supporting the leave request, including any available documentation such as a copy of a meeting announcement or copy of a bill (e.g., for financial or legal services);
- (4) the approximate date the qualifying exigency began or will begin;
- (5) if the request is for a single period of time, the beginning and end dates for the absence;
- (6) if the request is for intermittent or reduced schedule basis, an estimate of the frequency and duration of exigency;
- (7) if the exigency involves meeting with a third party or entity, contact information for the third party or entity and a brief description of the purpose of the meeting.

(b) **Application for military caregiver leave.**

- (1) A supervisor may require an employee who requests FMLA leave to care for a servicemember to submit a *County Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave Form* (Appendix T) indicating that the servicemember has a serious illness or injury incurred in the line of duty on active duty and is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list for the serious illness or injury incurred in the line of duty on active duty.
- (2) Medical certification may be provided by:

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- (A) a United States Department of Defense (DOD) health care provider;
- (B) a United States Department of Veterans Affairs health care provider;
- (C) a DOD TRICARE network authorized private health care provider;
or
- (D) a DOD non-network TRICARE authorized health care provider.
- (3) The supervisor may require confirmation of the employee's family relationship with the servicemember.
- (4) The supervisor may deny FMLA leave if the employee fails to provide complete certification as required by these Regulations upon request.

[19-10.]

19-13. Limits on the use of sick leave as FMLA leave.

* * *

[19-11.]

19-14. Transfer of employee on FMLA leave.

* * *

[19-12.]

19-15. Recording of FMLA leave.

* * *

[19-13.]

19-16. Relation of FMLA leave to other benefits.

* * *

[19-14.]

19-17. Reinstatement of an employee after FMLA leave.

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* * *

[19-16.]

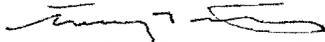
19.18. Rights under FMLA of an employee after military service

* * *

[19-15.]

19.19. Appeal of FMLA leave decision.

* * *

Approved: 
Isiah Leggett, County Executive

6/20/2009
Date

Approved as to form and legality:

Anne T. Wittle 5/18/09
Office of the County Attorney Date

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Military Family Leave and Other Family and Medical Leave Amendments to the 2001 Montgomery County Personnel Regulations

Executive Regulation No. 7-09

Issued by: County Executive

Supersedes: Executive Regulation No. 12-00AMII, in part

Authority: Montgomery County Code, 2004, §33-7(b)

Council review: Method 1

Montgomery County Register Volume 26, Issue 4

Comment deadline: April 30, 2009

Effective date: _____

Summary: This regulation amends Section 19 of the 2001 Montgomery County Personnel Regulations to encompass new military family leave entitlements included in amendments to the Family and Medical Leave Act of 1993 (FMLA) enacted as part of the National Defense Authorization Act for FY 2008 that was signed into law by President Bush on January 28, 2008. The changes in this regulation also reflect the final rule issued by the U.S. Department of Labor on November 17, 2008, updating and clarifying its FMLA regulations.

Address for comments Office of Human Resources, Executive Office Building, 7th Floor
101 Monroe Street, Rockville, Maryland 20850

Staff contact: Stuart Weisberg, 240-777-5051, or stuart.weisberg@montgomerycountymd.gov

This is a clean copy of the regulation that shows how it will appear after the amendments are incorporated. Use the key below when reading this regulation:

Boldface
* * *

Heading or defined term.
Existing language unchanged by executive regulation.

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SECTION 19. FAMILY AND MEDICAL LEAVE

19-1. Definitions.

- (a) **Active duty or call to active duty status:** Military duty under a call or order to active duty (or notification of an impending call or order to active duty) as a member of the National Guard or state militia, a member of a reserve component of the Armed Forces of the United States, or as a retired member of the Armed Forces or the Reserve under certain sections of Title 10 of the United States Code identified and discussed in 29 CFR Sec. 825.126(b)(2).
- (b) **Contingency operation:** A military operation designated by the Secretary of Defense as one in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force.
- (c) **Daughter or son:** An employee's biological, adopted, or foster child, stepchild, domestic partner's child, legal ward, or child for whom the employee stands in loco parentis and:
- (1) for purposes of regular family leave:
 - (i) who is under 18 years of age, or
 - (ii) 18 years of age or older and incapable of self-care because of a mental or physical disability at the time leave is to begin;
 - (2) who is of any age for purposes of military family leave:
- (d) **Extenuating circumstances:** Circumstances that prevent the follow-up visit from occurring as planned by the health care provider (e.g., if a health care provider determines that a second in-person visit is needed within the 30-day period, but the health care provider does not have any available appointments during that time period).



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- (e) **Health care provider:** A doctor of medicine or osteopathy who is authorized to practice medicine or surgery, as appropriate, by the State in which the doctor practices or another person capable of providing health care services, such as a podiatrist, dentist, clinical psychologist, optometrist, chiropractor, nurse-practitioner, nurse midwife, clinical social worker, physician assistant, or Christian Science practitioner.
- (f) **Next of kin:** The nearest blood relative other than the covered servicemember's spouse, domestic partner, parent, son, or daughter, in the following order of priority unless the servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under FMLA:
- (1) blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions;
 - (2) brothers and sisters;
 - (3) grandparents;
 - (4) aunts and uncles; and
 - (5) first cousins.
- (g) **Parent:** The biological, adoptive, step or foster mother or father of an employee or an individual who stands or stood in loco parentis to the employee when the employee was a child.
- (h) **Serious health condition:**
- (1) an illness, injury, impairment, or physical or mental condition that involves one of the following:
 - * * *
 - (D) a chronic condition that:

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- (i) requires visits at least twice a year for treatment by a health care provider or by a nurse or physician's assistant under the direct supervision of a health care provider;
- (ii) continues over an extended period of time (including recurring episodes of a single underlying condition; or
- (iii) may cause episodic incapacity rather than a continuing period of incapacity (e.g., asthma, diabetes, or epilepsy).

* * *

(2) The following terms used in the definition of "serious health condition" are defined as follows:

(A) **Absence plus treatment:** A period of incapacity of more than 3 consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

- (i) treatment 2 or more times by a health care provider, by a nurse, or physician's assistant under the direct supervision of a health care provider, or by a provider of health care services such as a physical therapist under orders of, or on referral by, a health care provider, within 30 days of the beginning of the period of incapacity, unless extenuating circumstances exist, (with the first treatment taking place within 7 days of the first day of incapacity and the need for a second treatment being determined by the health care provider and not the employee or patient); or

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(ii) treatment by a health care provider on at least one occasion, within 7 days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider.

(B) **Continuing treatment by a health care provider:**

Treatment 2 or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider or by a provider of health care services under the direct supervision of a health care provider or treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of a health care provider.

* * *

(F) **Treatment:** Includes but is not limited to an in-person visit to a health care provider for an examination to determine if a serious health condition exists or evaluation of a condition but does not include a routine physical, eye, or dental examination.

19-2. Intent under FMLA. It is the County's intent that this section be:

(a) used to implement the FMLA of 1993, as amended; and

* * *

19-3. Eligibility for FMLA leave. An employee is eligible to use FMLA leave if the employee:

(a) has a total of at least 12 months of County employment, if past (going back 7 years) and present County employment are combined;

* * *

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(d) provides medical certification, if requested, as described in Section 19-9(b)(2), or as described in Section 19-12(b), if applicable, and

* * *

19-4. Amount of FMLA leave.

* * *

(d) A supervisor must not count time that an employee spends performing light duty work as FMLA leave.

* * *

19-6. Authorized reasons for using FMLA leave. An eligible employee may use FMLA leave for any of the following reasons:

* * *

- (d) to care for, which may include providing psychological comfort and reassurance, or arrange care for, any of the following with a serious health condition: the employee's spouse, domestic partner, parent, daughter, or son;
- (e) because of the employee's serious health condition that makes the employee unable to perform the essential function of the employee's position;
- (f) to handle an exigency arising from the employee's spouse, domestic partner, parent, daughter, or son serving on active duty under a call or order or being notified of an impending call or order to active duty in support of a contingency operation as described in Section 19-11(b); or
- (g) to care for the employee's spouse, domestic partner, parent, daughter, son, or next of kin on active duty with a serious injury or illness incurred in the line of duty as described in Section 19-11(a).

19-7. Application for FMLA leave and notice required of employee.

(a) **Application for leave.** An employee must apply for FMLA leave by completing a *County Employee Request for FMLA Leave Form* (Appendix U)

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and submitting the form to the employee's supervisor.

(b) **Notice required of employee.**

* * *

- (3) if an employee could not foresee the need to use leave for an FMLA purpose, the employee must give the supervisor notice as soon as possible and must follow the department's usual and customary call-in procedures for reporting an absence, absent unusual circumstances.

19-8. **Supervisor's responsibility for designating leave as FMLA leave.**

(a) **Supervisor's initial designation of leave.**

* * *

- (3) A supervisor must designate leave as FMLA leave within 5 working days after an employee requests leave for an FMLA purpose.

* * *

- (c) **Information that a supervisor must give to an employee.** Within 5 working days after an employee requests leave for an FMLA purpose, the supervisor must inform the employee of:

* * *

19-9. **Use of FMLA leave.**

* * *

(b) **FMLA leave taken for a serious health condition.**

* * *

- (2) A supervisor may require an employee to submit a County *Medical Certification of Employee's Serious Health Condition Form* (Appendix P-1) or a County *Medical Certification of Family Member's Serious Health Condition Form* (Appendix P-2) to support a request for leave for a serious health condition.

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* * *

19-11. Use of military family leave.

(a) *Use of FMLA leave to care for a servicemember with a serious injury or illness.*

- (1) An eligible employee whose spouse, domestic partner, parent, son, daughter, or next of kin is a current member of the Armed Forces, including a member of the National Guard or Reserves, may use up to 26 workweeks of leave to care for the servicemember, if the servicemember:
 - (A) has a serious injury or illness that was incurred in the line of duty while on active duty; and is
 - (B)
 - (i) undergoing medical treatment, recuperation, or therapy;
 - (ii) otherwise in outpatient status; or
 - (iii) otherwise on the military temporary disability retired list.
- (2) The up to 26 workweeks of leave under Section 19-11(a)(1) must be taken by the employee during a single 12-month period. The leave period begins on the first day the employee takes leave to care for a covered servicemember and ends 12 months after that date.
- (3) If an employee does not take all of the 26 weeks of military caregiver leave during the applicable single 12-month period, the balance is forfeited and no-carryover is permitted.
- (4) After the single 12-month period expires, the employee is eligible for another 26 weeks of military caregiver leave during a subsequent single 12-month period to care for a different covered servicemember or to care for the same covered servicemember if that person incurs a different serious injury or illness.

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- (5) Leave to care for a covered servicemember with a serious injury or illness under Section 19-11(a) may be taken continuously, intermittently, or on a reduced schedule basis.
- (6) An employee is entitled to a combined total of 26 workweeks of military caregiver leave and leave for any other FMLA-qualifying reason, provided that the employee may not take more than 12 workweeks of leave for any other FMLA-qualifying reason during the calendar year.
- (b) *Use of FMLA leave to handle exigencies directly related to a close family member's active duty status or call to active duty.*
- (1) An eligible employee whose spouse, domestic partner, son, daughter, or parent has been called or ordered to active duty or has been notified of an impending order to active duty may use up to 12 workweeks of leave because of any of the following qualifying reasons:
- (A) to deal with an issue that arises because of a short-notice deployment when a military member is notified of an order to active duty with 7 or less calendar days of notice of the deployment;
- (B) to attend a military event or related activity, such as an official ceremony, program, or event sponsored by the military, a family support or assistance program, or an informational briefing sponsored or promoted by the military, military service organizations, or the American Red Cross;
- (C) to deal with an issue concerning childcare or school activities that arise from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on an urgent, immediate need basis (but not on



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a routine, regular, or everyday basis), enrolling in or transferring to a new school or day care facility, or attending a meeting with staff at a school or daycare facility;

- (D) to make a financial or legal arrangement, such as preparing or executing a financial or healthcare power of attorney, preparing or updating a will or living trust, transferring a bank account signature authority, or obtaining a military identification card;
 - (E) to obtain counseling, such as attending a counseling session provided by someone other than a healthcare provider;
 - (F) to spend time with a covered military member who is on short term temporary leave for rest and recuperation while on active duty;
 - (G) to participate in a post-deployment activity, such as attending an arrival ceremony, reintegration briefing, or any other official ceremony or program sponsored by the military within a period of 90 days after the end of the military member's active duty status;
 - (H) to address issues that arise from the death of a covered military member while on active duty status; and
 - (I) to deal with any other event that arises out of the covered service member's active duty or call to active duty status if the employer and employee agree:
 - (i) that the event qualifies as an exigency, and
 - (ii) on both the timing and duration of the leave.
- (2) An employee may use leave to deal with an issue arising from a service member's short-notice deployment for no more than 7 calendar days after receiving the notice of deployment.



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- (3) An employee may use leave to spend time with a covered military member who is on short term temporary leave for rest and recuperation while on active duty for no longer than 5 days for each instance.
- (4) A supervisor must count all hours of leave that an employee uses to handle issues arising from a close family member's being called or ordered to active duty military service against the employee's FMLA entitlement of 12 weeks in a leave year.

19-12. Application for military family leave.

- (a) **Application for leave for a qualified exigency.** A supervisor may require an employee requesting FMLA leave due to a qualifying military exigency to submit a *County Certification of Qualifying Exigency For Military Family Leave Form* (Appendix S). The certification should include the following information:
 - (1) a statement signed by the employee describing the nature and details of the specific exigency, the amount of leave needed, and the employee's relationship to the military member;
 - (2) a copy of the covered military member's active duty orders;
 - (3) a description of the facts supporting the leave request, including any available documentation such as a copy of a meeting announcement or copy of a bill (e.g., for financial or legal services);
 - (4) the approximate date the qualifying exigency began or will begin;
 - (5) if the request is for a single period of time, the beginning and end dates for the absence;
 - (6) if the request is for intermittent or reduced schedule basis, an estimate of the frequency and duration of exigency;

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(7) if the exigency involves meeting with a third party or entity, contact information for the third party or entity and a brief description of the purpose of the meeting.

(b) **Application for military caregiver leave.**

- (1) A supervisor may require an employee who requests FMLA leave to care for a servicemember to submit a *County Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave Form* (Appendix T) indicating that the servicemember has a serious illness or injury incurred in the line of duty on active duty and is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is on the temporary disability retired list for the serious illness or injury incurred in the line of duty on active duty.
- (2) Medical certification may be provided by:
 - (A) a United States Department of Defense (DOD) health care provider;
 - (B) a United States Department of Veterans Affairs health care provider;
 - (C) a DOD TRICARE network authorized private health care provider; or
 - (D) a DOD non-network TRICARE authorized health care provider.
- (3) The supervisor may require confirmation of the employee's family relationship with the servicemember.
- (4) The supervisor may deny FMLA leave if the employee fails to provide complete certification as required by these Regulations upon request.

19-13. Limits on the use of sick leave as FMLA leave.

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19.14. Transfer of employee on FMLA leave.

* * *

19.15. Recording of FMLA leave.

* * *

19.16. Relation of FMLA leave to other benefits.

* * *

19.17. Reinstatement of an employee after FMLA leave.

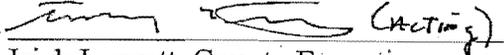
* * *

19.18. Rights under FMLA of an employee after military service

* * *

19.19. Appeal of FMLA leave decision.

* * *

Approved:  (Acting)
Isiah Leggett, County Executive

6/20/2009
Date

Approved as to form and legality:

Anne T. Windle 5/18/09
Office of the County Attorney Date

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Montgomery County Government
Medical Certification of Health Care Provider for Employee's Serious Health
Condition Form
(Family and Medical Leave Act of 1993 as amended)

SECTION I - For Completion by the EMPLOYEE

INSTRUCTIONS to the EMPLOYEE: Please complete Section I before giving this form to your medical provider. The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA leave for the employee's serious health condition to submit a timely and complete certification providing sufficient facts to support the request for leave. Your response is required to obtain or retain the benefit of FMLA-protected leave. Failure to do so may result in a denial of your FMLA request. You have 15 calendar days to return this form to your supervisor.

Your name: _____
First Middle Last

Your department/division _____

Your job title: _____ Your regular work schedule: _____

Your supervisor: _____

Your essential job functions: _____

Check if job description is attached: _____

SECTION II - For Completion by the HEALTHCARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Page 4 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: (____) _____ Fax:(____) _____

PART A - MEDICAL FACTS

1. Approximate date condition commenced: _____

Probable duration of condition: _____

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Mark below as applicable:

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?
 Yes No. If yes, dates of admission:

Date(s) you treated the patient for condition:

Will the patient need to have treatment visits at least twice per year due to the condition? Yes No.

Was medication, other than over-the-counter medication, prescribed? Yes No.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?
 Yes No. If so, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? Yes No. If yes, expected delivery date: _____

3. Use the information provided in Section I to answer this question.

Is the employee unable to perform any of his/her job functions due to the condition: Yes No.

If so, identify the job functions the employee is unable to perform:

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such as medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

PART B: AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? ___ Yes ___ No.

If so, estimate the beginning and ending dates for the period of incapacity: _____

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? ___ Yes ___ No.

If so, are the treatments or the reduced number of hours of work medically necessary?
___ Yes ___ No.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Estimate the part-time or reduced work schedule the employee needs, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ___ Yes ___ No.

Is it medically necessary for the employee to be absent from work during the flare-ups?
___ Yes ___ No. If yes, explain:

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: _____ times per _____ week(s) month(s) _____

Duration: _____ hours or _____ day(s) per episode

SECTION II: For Completion by the HEALTHCARE PROVIDER

INSTRUCTIONS to the HEALTH CARE PROVIDER: The employee listed above has requested leave under the FMLA to care for your patient. Answer, fully and completely, all applicable parts below. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the patient needs leave. Page 4 provides space for additional information, should you need it. Please be sure to sign the form on the last page.

Provider's name and business address: _____

Type of practice / Medical specialty: _____

Telephone: (_____) _____ Fax : (_____) _____

PART A: MEDICAL FACTS

1. Approximate date condition commenced: _____

Probable duration of condition: _____

Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?

___ Yes ___ No. If so, dates of admission: _____

Date(s) you treated the patient for condition: _____

Was medication, other than over-the-counter medication, prescribed? ___ Yes ___ No.

Will the patient need to have treatment visits at least twice per year due to the condition? ___ Yes ___ No.

Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?

___ Yes ___ No. If yes, state the nature of such treatments and expected duration of treatment:

2. Is the medical condition pregnancy? ___ Yes ___ No. If yes, expected delivery date: _____

3. Describe other relevant medical facts, if any, related to the condition for which the patient needs leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment):

PART B: AMOUNT OF CARE NEEDED: When answering these questions, keep in mind that your patient's need for care by the employee seeking leave may include assistance with basic medical, hygiene, nutritional, safety or transportation needs, or the provision of physical or psychological care.

4. Will the patient be incapacitated for a single continuous period of time, including any time for treatment and recovery? Yes No.

Estimate the beginning and ending dates for the period of incapacity: _____

During this time, will the patient need care? Yes No.

Explain the care needed by the patient and why such care is medically necessary:

5. Will the patient require follow-up treatments, including any time for recovery? Yes No.

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Explain the care needed by the patient, and why such care is medically necessary: _____

6. Will the patient require care on an intermittent or reduced schedule basis, including any time for recovery?

Yes No.

Estimate the hours the patient needs care on an intermittent basis, if any:

_____ hour(s) per day; _____ days per week from _____ through _____

Explain the care needed by the patient, and why such care is medically necessary:

7. Will the condition cause episodic flare-ups periodically preventing the patient from participating in normal daily activities? Yes No.

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days):

Frequency: times per week(s) month(s)

Duration: hours or day(s) per episode

Does the patient need care during these flare-ups? Yes No.

Explain the care needed by the patient, and why such care is medically necessary: _____

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER

Signature of Health Care Provider

Date

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Montgomery County Government
Certification of Qualifying Exigency Military Family Leave
(Family and Medical Leave Act of 1993)

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking military family leave due to a qualifying exigency to submit a timely, complete, and sufficient certification to support the request for leave. The employee should complete this form fully and completely. Several questions in this section seek a response as to the frequency or duration of the qualifying exigency. Be as specific as you can; terms such as "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Your response is required to obtain a benefit. While you are not required to provide this information, failure to do so may result in a denial of your request for FMLA leave. You have 15 calendar days to return this form to your supervisor.

Your Name: _____
First Middle Last

Name of covered military member on active duty or call to active duty status in support of a contingency operation:

First Middle Last

Relationship of covered military member to you: _____

Period of covered military member's active duty: _____

A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes written documentation confirming a covered military member's active duty or call to active duty status in support of a contingency operation. Please check one of the following:

- A copy of the covered military member's active duty orders is attached.
Other documentation from the military certifying that the covered military member is on active duty (or has been notified of an impending call to active duty) in support of a contingency operation is attached.
I have previously provided my employer with sufficient written documentation confirming the covered military member's active duty or call to active duty status in support of a contingency operation.

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PART A: QUALIFYING REASON FOR LEAVE

- 1. Describe the reason you are requesting FMLA leave due to a qualifying exigency (including the specific reason you are requesting leave):

- 2. A complete and sufficient certification to support a request for FMLA leave due to a qualifying exigency includes any available written documentation which supports the need for leave; such documentation may include a copy of a meeting announcement for informational briefings sponsored by the military, a document confirming an appointment with a counselor or school official, or a copy of a bill for services for the handling of legal or financial affairs. Available written documentation supporting this request for leave is attached. ___ Yes ___ No ___ None Available

PART B: AMOUNT OF LEAVE NEEDED

- 1. Approximate date exigency commenced: _____
Probable duration of exigency: _____

- 2. Will you need to be absent from work for a single continuous period of time due to the qualifying exigency? ___ Yes ___ No.

If so, estimate the beginning and ending dates for the period of absence:

- 3. Will you need to be absent from work periodically to address this qualifying exigency? ___ Yes ___ No.

Estimate schedule of leave, including the dates of any scheduled meetings or appointments:

Estimate the frequency and duration of each appointment, meeting, or leave event, including any travel time (i.e., 1 deployment-related meeting every month lasting 4 hours):

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours ___ day(s) per event.

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PART C

If leave is requested to meet with a third party (such as to arrange for childcare, to attend counseling, to attend meetings with school or childcare providers, to make financial or legal arrangements, to act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging or appealing military service benefits, or to attend any event sponsored by the military or military service organizations), a complete and sufficient certification includes the name, address, and appropriate contact information of the individual or entity with whom you are meeting (i.e., either the telephone or fax number or email address of the individual or entity). This information may be used by the County Government to verify that the information contained on this form is accurate.

Name of Individual: _____ Title: _____

Organization: _____

Address: _____

Telephone: () _____ Fax: () _____

Email: _____

Describe nature of meeting: _____

PART D

I certify that the information I provided above is true and correct.

Signature of Employee

Date

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APPENDIX T



Montgomery County Government
Certification for Serious Injury or Illness of Covered Servicemember for Military
Family Leave
(Family and Medical Leave Act of 1993)

The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking military family leave due to a serious injury or illness of a covered servicemember to submit a timely, and complete certification providing sufficient facts to support the request for leave.

SECTION I: For Completion by the EMPLOYEE and/or the COVERED SERVICEMEMBER for whom the Employee is Requesting Leave The employee or covered servicemember should complete Section I before having Section II completed. Your response is required to obtain or retain the benefit of FMLA-protected leave. Failure to do so may result in a denial of an employee's FMLA request. You have 15 calendar days to return this form to your supervisor.

SECTION II: For Completion by a UNITED STATES DEPARTMENT OF DEFENSE ("DOD") HEALTH CARE PROVIDER or a HEALTH CARE PROVIDER who is either: (1) a United States Department of Veterans Affairs ("VA") health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider. **INSTRUCTIONS to the HEALTH CARE PROVIDER:** The employee listed on Page 2 has requested leave under the FMLA to care for a family member who is a member of the Regular Armed Forces, the National Guard, or the Reserves who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness. For purposes of FMLA leave, a serious injury or illness is one that was incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating.

A complete and sufficient certification to support a request for FMLA leave due to a covered servicemember's serious injury or illness includes written documentation confirming that the covered servicemember's injury or illness was incurred in the line of duty on active duty and that the covered servicemember is undergoing treatment for such injury or illness by a health care provider listed above. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave.

SECTION I: For Completion by the EMPLOYEE and/or the COVERED SERVICEMEMBER for whom the Employee is Requesting Leave: (This section must be completed first before any of the below sections can be completed by a health care provider.)

Part A: EMPLOYEE INFORMATION

Name and Address of Employer (this is the employer of the employee requesting leave to care for covered servicemember):

Name of Employee Requesting Leave to Care for Covered Servicemember:

First Middle Last

Name of Covered Servicemember (for whom employee is requesting leave to care):

First Middle Last

Relationship of Employee to Covered Servicemember Requesting Leave to Care:

____ Spouse ____ Parent ____ Son ____ Daughter ____ Next of Kin

Part B: COVERED SERVICEMEMBER INFORMATION

(1) Is the Covered Servicemember a Current Member of the Regular Armed Forces, the National Guard or Reserves? ____ Yes ____ No

If yes, please provide the covered servicemember's military branch, rank and unit currently assigned to:

Is the covered servicemember assigned to a military medical treatment facility as an outpatient or to a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients (such as a medical hold or warrior transition unit)? ____ Yes ____ No. If yes, please provide the name of the medical treatment facility or unit: _____

(2) Is the Covered Servicemember on the Temporary Disability Retired List (TDRL)? ____ Yes ____ No

Part C: CARE TO BE PROVIDED TO THE COVERED SERVICEMEMBER

Describe the Care to Be Provided to the Covered Servicemember and an Estimate of the Leave Needed to Provide the Care:

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SECTION III: For Completion by a United States Department of Defense (DOD) Health Care Provider or Health Care Provider who is either: (1) a United States Department of Veterans Affairs (VA) health care provider; (2) a DOD TRICARE network authorized private health care provider; or (3) a DOD non-network TRICARE authorized private health care provider. If you are unable to make certain of the military-related determinations contained below in Part B, you are permitted to rely upon determinations from an authorized DOD representative (such as a DOD recovery care coordinator). (Please ensure that Section I above has been completed before completing this section.) Please be sure to sign the form on the last page.

Part A. HEALTHCARE PROVIDER INFORMATION

Health Care Provider's Name and Business Address:

Type of Practice/Medical Specialty: _____

Please state whether you are either: (1) a DOD health care provider; (2) a VA health care provider; (3) a DOD TRICARE network authorized private health care provider; or (4) a DOD non-network TRICARE authorized private health care provider: _____

Telephone: () _____ Fax: () _____ Email: _____

PART B. MEDICAL STATUS

(1) Covered Servicemember's medical condition is classified as (Check One of the Appropriate Boxes):

(VSI) Very Seriously Ill/Injured – Illness/Injury is of such a severity that life is imminently endangered. Family members are requested at bedside immediately. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

(SI) Seriously Ill/Injured – Illness/injury is of such severity that there is cause for immediate concern, but there is no imminent danger to life. Family members are requested at bedside. (Please note this is an internal DOD casualty assistance designation used by DOD healthcare providers.)

OTHER Ill/Injured – a serious injury or illness that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

NONE OF THE ABOVE (Note to Employee: If this box is checked, you may still be eligible to take leave to care for a covered family member with a "serious health condition" under § 825.113 of the FMLA. If such leave is requested, you may be required to complete DOL FORM WH-380 or an employer-provided form seeking the same information.)

(2) Was the condition for which the Covered Service member is being treated incurred in line of duty on active duty in the armed forces? ____ Yes ____ No

(3) Approximate date condition commenced: _____

(4) Probable duration of condition and/or need for care: _____

(5) Is the covered servicemember undergoing medical treatment, recuperation, or therapy? ____ Yes ____ No
If yes, please describe medical treatment, recuperation or therapy:

PART C. COVERED SERVICEMEMBER'S NEED FOR CARE BY FAMILY MEMBER

- (1) Will the covered servicemember need care for a single continuous period of time, including any time for treatment and recovery? Yes No
If yes, estimate the beginning and ending dates for this period of time: _____

- (2) Will the covered servicemember require periodic follow-up treatment appointments?
 Yes No If yes, estimate the treatment schedule: _____

- (3) Is there a medical necessity for the covered servicemember to have periodic care for these follow-up treatment appointments? Yes No

- (4) Is there a medical necessity for the covered servicemember to have periodic care for other than scheduled follow-up treatment appointments (e.g., episodic flare-ups of medical condition)? Yes No. If yes, please estimate the frequency and duration of the periodic care:

Signature of Health Care Provider: _____ Date: _____

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APPENDIX U
MONTGOMERY COUNTY GOVERNMENT
Employee Request for Family and Medical Leave (FMLA)

Date: _____

TO: (name of supervisor) _____

FROM: (name of employee) _____

Department/Division _____

SUBJECT: Request for Family and Medical Leave (FMLA Leave)

I have worked for Montgomery County for a total of at least 12 months:

___ Yes ___ No ___ Unsure

I have worked for Montgomery County for at least 1040 hours, not including hours of paid leave, during the past 12 months:

___ Yes ___ No ___ Unsure

I need to take FMLA leave because of:

- the birth of a child, or the placement of a child with me for adoption or foster care;
- a serious health condition that makes me unable to perform the essential functions of my job;
- a serious health condition affecting my
 - spouse
 - domestic partner
 - minor child
 - adult child incapable of self-care
 - parent;
- to handle an exigency directly related to active duty status or a call to active duty of my
 - spouse
 - domestic partner
 - son or daughter
 - parent; or
- to care for a servicemember with a serious injury or illness incurred in the line of duty while on active duty who is my
 - spouse
 - domestic partner
 - son or daughter
 - parent
 - next of kin
- I need this leave to begin on (date) _____ and expect it to continue until (date) _____ and want to take this leave using:
 - accrued annual leave
 - accrued sick leave or family sick leave
 - accrued personal leave
 - leave without pay
 - some combination of the above
- I need to take this FMLA leave on an intermittent or as needed basis.



MERIT SYSTEM PROTECTION BOARD

MEMORANDUM

April 16, 2009

TO: Joseph Adler, Director
Office of Human Resources

FROM: Bruce Ervin Wood, Chair *BEW*
Merit System Protection Board

SUBJECT: Military Family Leave and Other Family and Medical Leave Amendments
to the 2001 Montgomery County Personnel Regulations

This is in response to your memorandum, dated April 9, 2009, subject as above. The Board has carefully reviewed the proposed changes to the Personnel Regulations and has no objection to their adoption.

cc: Board Members

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OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

March 19, 2009

TO: Joseph F. Beach, Director
Office of Management and Budget

VIA: ^{AE} Alex Espinosa, Management and Budget Manager

FROM: ^{LO} Lori O'Brien, Management and Budget Specialist

SUBJECT: Executive Regulation No. 7-09, Military Family Leave and
Other Family and Medical Leave Amendments

REGULATION SUMMARY

The proposed regulation amends Section 19 of the 2001 Montgomery County Personnel Regulations. It encompasses new military family leave entitlements included in amendments to the Family and Medical Leave Act of 1993 (FMLA) enacted as part of the National Defense Authorization Act for FY 2008. These proposed changes also reflect the final rule issued by the U.S. Department of Labor on November 17, 2008, updating and clarifying its FMLA regulations.

FISCAL SUMMARY

There is no fiscal impact to the County resulting from the proposed regulation.

Stuart Weisberg of the Department of Human Resources contributed to this analysis.

jfb:lob

c: Timothy L. Firestine, Chief Administrative Officer
Kathleen Boucher, Assistant Chief Administrative Officer
Caroline Darden, Offices of the Chief Executive
Brady Goldsmith, Office of Management and Budget
Alex Espinosa, Office of Management and Budget
Lori O'Brien, Office of Management and Budget
Stuart Weisberg, Office of Human Resources

OMB REVIEW

X Fiscal Impact Statement approved Beryl H. Fenberg,
for OMB Director

_____ Fiscal Impact Statement not approved, OMB will contact department to remedy.

Office of the Director

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