

SECTION 19. FAMILY AND MEDICAL LEAVE

(As amended December 10, 2002, October 21, 2008, September 22, 2009, July 12, 2011, July 23, 2013, and June 30, 2015)

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).
- (e) **FMLA Program Manager.** Person in OHR/OMS who administers the County's FMLA Program, reviews requests and medical certifications submitted by employees for FMLA leave, determines eligibility issues in consultation with the OHR Director and the County Attorney's Office when necessary, and provides assistance to employees and supervisors on FMLA.
- (f) **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.

- (g) ***Next of kin:*** The nearest blood relative other than the covered service member'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.
- (h) ***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.
- (i) ***Serious health condition:***
- (1) An illness, injury, impairment, or physical or mental condition that involves one of the following:
 - (A) hospital care;
 - (B) absence plus treatment;
 - (C) any period of incapacity due to pregnancy or for prenatal care;
 - (D) a chronic condition that:
 - (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).

- (E) a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, such as Alzheimer's, a severe stroke, or the terminal stages of a disease, and for which the employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider;
 - (F) a period of absence to receive multiple treatments for a non-chronic condition, including time needed to recover from the treatment, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than 3 calendar days in the absence of medical intervention or treatment, such as treatments for cancer, severe arthritis, or kidney disease;
 - (G) treatment for substance abuse but not for illness caused by active substance abuse without treatment of the underlying substance abuse problem; and
 - (H) hospital care for complications from a cosmetic treatment but not for the cosmetic treatment.
- (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
 - (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.

- (C) ***Hospital care or inpatient care:*** An overnight stay in a hospital, hospice, or residential medical care facility and any period of incapacity or any later treatment in connection with the inpatient care.
- (D) ***Incapacity:*** Inability to work, attend school, or perform other regular daily activities due to a serious health condition, the treatment of a serious health condition, or recovery from a serious health condition.
- (E) ***Regimen of continuing treatment:*** Includes but is not limited to a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition, but does not include, by itself, the taking of over-the-counter medications, bed rest, drinking fluids, exercise of similar activities that can be initiated by an individual without a visit to 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
- (b) interpreted and applied consistent with the FMLA, except where County statutes and regulations provide greater benefits.

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;
- (b) was paid for at least 1040 hours of work, not including hours of paid leave, during the 12 months before the requested leave is to begin;
- (c) complies with applicable notice requirements described in Section 19-7(b);
- (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
- (e) has a reason to use the leave that is authorized by the Family and Medical Leave Act.

19-4. Amount of FMLA leave.

- (a) An eligible employee may use up to 12 workweeks of FMLA leave in a leave year as defined in Section 1-34.
- (b) A workweek for FMLA purposes is a week that includes the average number of hours that an employee works in a week and includes any holiday that occurs during the week.
- (c) If an employee uses FMLA leave intermittently or as part of a reduced workweek, the employee's FMLA leave entitlement is calculated based on hours instead of weeks.

19-5. Types of leave that may be used as FMLA leave.

- (a) An eligible employee may choose the type of leave that is used as FMLA leave, but must use LWOP if the employee has exhausted all appropriate types of paid leave.
- (b) The FMLA Program Manager must allow an eligible employee to use LWOP, annual leave, or personal leave days for any FMLA purpose.
- (c) An eligible employee may use sick leave as FMLA leave only if it is an authorized use of sick leave.

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

- (a) to care for the employee's newborn daughter or son, newly adopted daughter or son, or newly placed foster daughter or son within the first 12 months after the birth, adoption, or placement of the daughter or son;
- (b) to arrange for the adoption or foster care placement of a daughter or son with the employee;
- (c) to obtain prenatal care for the employee;
- (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 functions 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) and submitting the form to the FMLA Program Manager.
- (b) ***Notice required of employee.***
 - (1) An employee must give the employee's supervisor as much advance notice as possible of the need to use leave for an FMLA purpose so as not to disrupt the work unit unduly.
 - (2) If an employee needs to use paid or unpaid leave to care for a new daughter or son, the employee must give 30 calendar days advance written notice or as much notice as possible if the need to use the leave is not foreseeable.
 - (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. Responsibility for Handling FMLA leave.

(a) *FMLA Program Manager's Responsibility*

- (1) The FMLA Program Manager must determine within 5 working days after an employee submits a request for leave for a FMLA purpose whether or not to approve the request.
- (2) The FMLA Program Manager 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) completed by the health care provider treating the serious health condition to support a request for leave for a serious health condition.
- (3) The FMLA Program Manager may make a provisional designation of leave as FMLA leave if the FMLA Program Manager asked the employee to submit medical certification for the requested leave but the employee has not submitted the medical certification yet.
- (4) Upon receiving written authorization from an employee, the FMLA Program Manager or the Employee Medical Examiner (EME) may directly contact the employee's health care provider to clarify or better understand responses on the FMLA Medical Certification or Recertification form.

- (5) Under 29 CFR 825.307 of the U.S. Department of Labor's FMLA Regulations, if an employee chooses not to provide the employer with authorization allowing the employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, the employer may deny the taking of FMLA leave if the certification is unclear.
- (6) ***Information that the FMLA Program manager must give to an employee.*** Within 5 working days after an employee requests leave for a FMLA purpose, the FMLA Program Manager must inform the employee of the following and may use *Response to Employee Request for FMLA Leave* (Appendix O):
 - (A) whether the requested leave will be counted against the employee's annual FMLA entitlement;
 - (B) whether the employee must submit medical certification to support the request for leave and the consequences if the employee fails to submit a required certification;
 - (C) what type of paid leave may be used as FMLA leave, depending on the reason for the requested leave;
 - (D) whether the employee must pay for health insurance during any period of leave without pay and the obligation of the employee to repay the County for health insurance payments made by the County;
 - (E) whether the employee must present a fitness-for-duty certification from the employee's health care provider upon return from FMLA leave;
 - (F) the amount of notice the employee must give before using the leave;
 - (G) whether the employee must report periodically to the employee's supervisor during the period of leave; and
 - (H) other specific information requested by the employee or indicated by the employee's leave request.
- (7) ***Recertification.*** The FMLA Program Manager may request a new medical certification by a health care provider of an employee's serious health condition or a serious health condition of a family member:
 - (A) each calendar year for a medical condition that lasts longer than one year;

- (B) in less than 30 days in any of the following situations:
 - (i) employee requests an extension of FMLA leave;
 - (ii) circumstances described by the previous certification have changed significantly (e.g. the duration or frequency of the absence, the nature or severity of the illness, complications);
 - (iii) employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of original certification;
 - (C) no more often than every 30 days and only in connection with an absence by the employee.
- (8) An employee has 15 calendar days after a request by the FMLA Program Manager to submit the medical recertification to the FMLA Program Manager.
 - (9) Any recertification requested by the FMLA Program Manager shall be at the employee's expense.
 - (10) While no second or third medical opinions may be requested in connection with a recertification, the FMLA Program manager or the EME may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.
- (b) ***Supervisor's Responsibility.***
- (1) A supervisor must designate a period of leave as FMLA leave even if the employee did not request FMLA leave, if:
 - (A) the leave is taken for a FMLA-qualifying reason under Section 19-6;
 - (B) the employee is eligible for FMLA leave; and
 - (C) the employee has not already exhausted the FMLA leave entitlement for the leave year.
 - (2) A supervisor must base the designation on information received from the employee or from another person authorized to speak for the employee.
 - (3) A supervisor must designate a period of disability leave as FMLA leave, even if the employee did not request FMLA leave, if:

- (A) the leave is taken for a FMLA-qualifying reason under Section 19-6;
 - (B) the employee is eligible for FMLA leave; and
 - (C) the employee has not already exhausted the FMLA leave entitlement for the leave year.
- (4) A supervisor who designates a period of disability leave as FMLA leave cannot require the employee to take a light duty assignment until the employee has exhausted the employee's FMLA leave.
- (5) A supervisor must not count time that an employee spends performing light duty work as FMLA leave.
- (6) A supervisor must designate leave by telling the employee orally or in writing that the leave has been designated as FMLA leave and confirming an oral designation in writing.
- (7) If a supervisor has information from an employee on leave to indicate that the employee is using leave for an FMLA purpose, but the supervisor did not designate the leave before the leave began or within 2 working days of the request, the supervisor may designate the entire period of leave as FMLA leave, unless:
- (A) the employee did not know that the leave already used before the supervisor designated it as FMLA leave would be considered FMLA leave; and
 - (B) the employee shows that the employee would have taken less FMLA leave or used intermittent FMLA leave if the employee had received the designation earlier.

19-9. Use of FMLA leave.

- (a) *Use of FMLA leave to care for a new child.*
- (1) An employee may use FMLA leave for a court proceeding or a meeting with a social worker or other person if it is required to finalize arrangements for an adoption or foster care placement.
- (2) An employee who uses FMLA leave to care for a newborn child or child newly placed for adoption or foster care:
- (A) must use the leave within 12 months of the birth, adoption, or foster care placement of the child; and

- (B) may use the leave on an intermittent or reduced workweek basis only if the employee's supervisor approves it.
 - (3) If an employee uses FMLA leave to care for a new child, the employee's supervisor must also count the leave as parental leave under Section 20 of these Regulations unless:
 - (A) the employee is not eligible to use parental leave;
 - (B) the leave is taken to care for a newly placed foster child; or
 - (C) the employee has exhausted the parental leave entitlement.
 - (4) If an employee uses FMLA leave to care for a new child and the FMLA leave does not qualify as parental leave under Section 20 of these Regulations, the employee must not use more sick leave for this purpose than the employee earns in a leave year.
- (b) ***FMLA leave taken for a serious health condition.***
- (1) An employee may use FMLA leave on a continuing, intermittent, or reduced work week basis, as needed to care for the employee's spouse, minor child, adult son or daughter incapable of self care, parent, or domestic partner with a serious health condition or because of the employee's own serious health condition.

19-10. 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.
 - (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

- 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.
 - (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.

19-11. Application for military family leave.

- (a) ***Application for leave for a qualified exigency.*** The FMLA Program Manager 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;
 - (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) The FMLA Program Manager 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 FMLA Program Manager may require confirmation of the employee's family relationship with the servicemember.
 - (4) The FMLA Program Manager may deny FMLA leave if the employee fails to provide complete certification as required by these Regulations upon request.

19-12. Limits on the use of sick leave as FMLA leave.

- (a) An employee may use sick leave for the entire period of FMLA leave if the FMLA leave is used:
 - (1) to care for the employee's newborn or newly adopted child and the leave qualifies as parental leave under Section 20 of these Regulations;
 - (2) to obtain prenatal care for the employee; or
 - (3) because of the employee's serious health condition that makes the employee unable to perform the functions of the employee's position.
- (b) An employee may only use as much sick leave as the employee earns in a leave year as FMLA leave if the leave is used:
 - (1) to care for the employee's newborn or newly adopted child and the leave does not qualify as parental leave under Section 20 of these Regulations;
or
 - (2) to care for, or arrange care for, any of the following with a serious health

condition: the employee's spouse, domestic partner, minor child, adult son or daughter incapable of self care, or parent.

19-13. Transfer of employee on FMLA leave. If an employee uses FMLA leave intermittently or as part of a reduced workweek, the department director may temporarily transfer the employee to another position with equivalent pay and benefits in the same department during the period of FMLA leave.

19-14. Recording of FMLA leave.

- (a) An employee or supervisor must record leave designated as FMLA leave on the timesheet as FMLA leave, and, as applicable, as annual leave, personal leave, sick leave, disability leave or leave without pay.
- (b) An exempt employee under the FLSA may record less than one full day of LWOP as FMLA leave without affecting the employee's exempt status.

19-15. Relation of FMLA leave to other benefits.

- (a) An employee who uses LWOP under this section must keep all health and life insurance benefits for the entire period of LWOP.
- (b) After the employee returns from FMLA leave, the employee must repay the County for the employee's share of the cost of the insurance if the employee did not pay for insurance during the LWOP.
- (c) When an employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or has expired, the employee must repay the County for the County's share of insurance premiums for periods of unpaid leave, unless the employee does not return to work because of:
 - (1) continuation, recurrence, or onset of a serious health condition of the employee or the employee's family member that would otherwise entitle the employee to leave under FMLA; or
 - (2) other circumstances beyond the employee's control, such as:
 - (A) the employee chooses to stay home with the employee's newborn child who has a serious health condition;
 - (B) the employee's spouse is transferred to a job location more than 75 miles from the employee's worksite; or
 - (C) the employee is needed to provide care for a relative or individual other than an immediate family member with a serious health condition.

- (d) If an employee fails to return to work because of the continuation, recurrence, or onset of a serious health condition, the County may require medical certification of the employee's or the family member's serious health condition. If the County requests such certification, the employee must provide medical certification within 30 calendar days from the date of the County's request. If the employee does not provide such certification within 30 calendar days or the reason for not returning to work does not meet the test of "other circumstances beyond the employee's control", the County may recover the employee's share of the cost of the insurance premiums paid during the period of unpaid FMLA leave.
- (e) If an employee fails to return to work, any insurance premiums that the County is entitled to recover from the employee are a debt owed by the non-returning employee to the County. The County may recover the costs through deduction from any sums due to the employee such as unpaid wages, annual leave, or retirement contributions, provided that such deductions do not otherwise violate applicable Federal or State laws.

19-16. Reinstatement of an employee after FMLA leave.

- (a) When an employee returns from FMLA leave, the department director must reinstate the employee to the same position the employee had before the leave began; or place the employee in an equivalent position
- (b) An equivalent position must have:
 - (1) the same pay and benefits; and
 - (2) the same or substantially similar:
 - (A) duties;
 - (B) working conditions;
 - (C) responsibilities;
 - (D) privileges;
 - (E) status;
 - (F) location;
 - (G) shift or work schedule;
 - (H) overtime opportunity; and
 - (I) opportunity for bonuses.

- (c) An employee is entitled to reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence.
- (d) An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period.

19-17. Rights under FMLA of an employee after military leave.

- (a) To determine if an employee who has returned from military leave has met the FMLA eligibility requirement of a total of 12 months of County employment, the County must count each month of military service as a month of active County employment.
- (b) To determine if an employee who has returned from military leave has met the County FMLA eligibility requirement of at least 1040 hours of paid work, not including paid leave, during the previous 12 months, the County must include the hours that the employee would have worked for the County during the previous 12 months if the employee had not been on military leave.

19-18. Appeal of FMLA leave decision. An employee with merit system status who is adversely affected by an alleged improper, inequitable, or unfair application of the County's regulations and policies on FMLA leave may file a grievance under Section 34 of these Regulations.

Editor's note – Additional information and frequently asked questions about FMLA leave can be found in HR Topics – FMLA Leave, which is available from the Office of Human Resources.

| Bargaining unit | Articles of current agreements with references to FMLA leave |
|------------------------|---|
| Firefighter/Rescuer | 6, Annual Leave 7, Sick Leave 8, Parental Leave 11, Family Medical Leave 12, Leave Without Pay |
| OPT/SLT | 16, Leave Without Pay 18, Parental Leave 45, Family and Medical Leave |
| Police | 12, Seniority 16, Parental Leave 18, Annual Leave 19, Sick Leave and Sick Leave Donor Procedure 20, Leave Without Pay 21, Compensatory Time 23, Maintenance of Standards/Retention of Benefits 27, Secondary Employment 59, Family Medical Leave Act 63, Childcare |