

**COURT ORDER
2017-0771**



Revised Family and Medical Leave (FMLA) Policy - Article IX

On a motion made by Commissioner John Wiley Price, District 3, and seconded by Commissioner Dr. Elba Garcia, District 4, the following order was passed and adopted by the Commissioners Court of Dallas County, State of Texas:

BRIEFING DATE: 6/6/2017
FUNDING SOURCE: General Fund

Be it resolved and ordered that the Dallas County Commissioners Court does hereby approve the revisions to the Dallas County FMLA Policy based on the recommendations from the Department of Labor as outlined in Attachment A - Article IX: Family and Medical Leave for immediate inclusion in the Dallas County Code.

Done in open court June 6, 2017, by the following vote:

IN FAVOR: Honorable Clay Lewis Jenkins, County Judge
Commissioner Dr. Theresa M. Daniel, District 1
Commissioner Mike Cantrell, District 2
Commissioner John Wiley Price, District 3
Commissioner Dr. Elba Garcia, District 4

OPPOSED: None
ABSTAINED: None
ABSENT: None

Recommended by: Urmit Graham
Originating Department: Human Resources

COMMISSIONERS COURT BRIEFING



DATE: 6/6/2017

SUBMITTING DEPARTMENT: Human Resources

THROUGH:

SUBJECT: Revised Family and Medical Leave (FMLA) Policy - Article IX

BACKGROUND:

The Department of Labor has recommended an update to the Dallas County FMLA policy as attached. See underline and strike through for policy revisions.

OPERATIONAL IMPACT:

These policy revisions provide clarification and guidance to Elected Official/Department Heads, manager, and employees when addressing the administrative aspect of FMLA.

FINANCIAL IMPACT:

N/A

LEGAL IMPACT:

The Civil Section of the District Attorney's Office has reviewed these policy changes as recommended by the Department of Labor.

PROJECT SCHEDULE:

N/A

M/WBE PARTICIPATION:

N/A

ADMINISTRATIVE PLAN COMPLIANCE:

Recommendation supports Dallas County's Vision under the Administrative Plan of becoming operationally a model governmental entity by supporting Objective 6: Update, Improve, Maintain, and Make Readily Available Online Collection of All County Policies. This policy will provide due process to Civil Service protected employees regarding FMLA related issues.

RECOMMENDATION:

The Human Resource/Civil Service Department recommends Commissioners Court approve the revisions to the Dallas County FMLA Policy based on the recommendations from the Department of Labor as outlined in Attachment A - Article IX: Family and Medical Leave for immediate inclusion in the Dallas County Code.

RECOMMENDED BY:	Human Resources	PREPARED BY:	Urmit Graham
		APPROVED BY DEPT HEAD:	Urmit Graham

ARTICLE IX. FAMILY AND MEDICAL LEAVE* (This section reflects recent court approved policy language. Court Order# 2012 0237 February 7, 2012; Court Order #2014 0835 June 17, 2014)

*Federal law reference--Family and Medical Leave Act, 29 USC 2601 et seq.

Sec. 82-601. Purpose of article.

- (a) The purpose of this article is to comply with the Family and Medical Leave Act of 1993 (FMLA) and the National Defense Authorization Act for FY2008, balance the demands of the workplace with employees' medical and family needs and accomplish these purposes in a manner that accommodates the interests of the county.
- (b) This article outlines the responsibilities of manager/supervisors and employees to ensure compliance with The Family and Medical Leave Act whose purpose is to provide specific job protections for covered employees on leave.
- (c) The county requires all managers/supervisors and employees to follow these outlined policies and procedures. Failure to comply with these guidelines may result in serious consequences for the county, and when appropriate, elected officials/department heads may take disciplinary action, up to and including termination.

(Ord. No. 2000-485, § 5.00, 3-7-2000; Ord. No. 2002-1977, 10-29-2002; Ord. No. 2009-0883, 5-12-2009)

Sec. 82-602. Effective date.

This article takes effect on January 16, 2009, and replaces policies previously adopted by the county commissioners court on August 5, 1993, and revised again on November 23, 1993, September 1, 1998, and February 22, 2000.

(Ord. No. 2000-485, § 5.01, 3-7-2000; Ord. No. 2002-1977, 10-29-2002; Ord. No. 2009-0883, 5-12-2009)

Sec. 82-603. Summary of benefits.

If the employee complies with the obligations outlined in this article, the county will:

- (1) Provide eligible employees up to 12 weeks of family and medical leave, including military family leave, within a defined 12-month period.

The 12 weeks of family and medical leave for part-time employees shall be determined on a proportional basis.

Example: If an employee normally works 30 hours each week, a week of family and medical leave would be 30 hours. If an employee's schedule varies from week to week, a weekly average of the hours worked over the 12 weeks before the beginning of the leave period will be used to calculate the employee's normal workweek.

- (2) Provide eligible employees up to 26 weeks of leave in a single 12-month period to care for an injured or ill covered military service member;

- (3) Return the employee to the same or equivalent position with equivalent pay, benefits and working conditions if the employee returns to work after the leave; and
- (4) Continue to contribute to group health benefits at the same group level during the leave unless the employee cancels health insurance for himself/herself and/or dependents.

(Ord. No. 2000-485, § 5.02, 3-7-2000; Ord. No. 2002-1977, 10-29-2002; Ord. No. 2009-0883, 5-12-2009)

Sec. 82-604. Key employee.

In some situations, in order to prevent substantial and grievous economic harm to county operations, key salaried employees may be denied reinstatement after family and medical leave. Key salaried employees are defined by the Family and Medical Leave Act as the top ten percent of all wage earners in an organization. Some examples of such employees may include directors, assistant directors of large departments, doctors, etc. When an elected official/department head receives a leave request from an employee and has reason to believe the employee may fall into this category, he:

- (1) Should contact the human resources/civil service department to assist in determining the employee's status;
- (2) Should provide written notification to the employee within two working days that he is a key employee and provide them with a copy of the Family and Medical Leave Policy; and
- (3) Must notify such employee either orally or in writing within two working days of receiving the information from the employee's health care provider that reinstatement after family and medical leave will or will not cause substantial and grievous economic harm. If the employee is notified orally, the elected official/department head shall provide in person or send, both regular and certified mail, a Notice of Eligibility and Rights & Responsibilities (form HR/CS 14) to the employee within five working days.

Elected officials/department heads should review sections 82-607(b) and 82-607(c) for more specific information regarding the submission of forms for planned and unplanned events.

(Ord. No. 2000-485, § 5.03, 3-7-2000; Ord. No. 2002-1977, 10-29-2002; Ord. No. 2009-0883, 5-12-2009)

Sec. 82-605. Eligibility.

- (a) *Eligible employees (includes part-time).* Employees eligible to request family and medical leave are those who:
 - (1) Have been employed by the county for at least 12 months in the last 7 years.
Employment periods before a separation that is older than 7 years will not count towards eligibility unless the break in service is due to fulfillment of the employee's Uniformed Services Employment and Reemployment Rights Act ("USERRA") service obligations; and

- (2) Have worked at least 1,250 hours during the 12-month period preceding the commencement of the leave.

A person re-employed following military service shall have the hours that would have been worked for the county (but for the USERRA service obligations) added to any hours actually worked during the previous 12-month period to meet the 1250 hour requirement.

- (3) Employees who meet the eligibility requirements and are granted family and medical leave are restricted from working a second job while on leave with Dallas County, unless a written exception to work a second job has been approved by the elected official/department head.

(b) Qualifying reasons for leave. The county is required to grant leave to eligible employees:

- (1) For the birth of a child, or placement of a child by adoption or foster care;
- (2) To care for an eligible family member with a serious health condition;
- (3) To take medical leave because of a serious health condition that makes the employee unable to work at all or unable to perform any one of the essential functions of the employee's job;
- (4) To care for a current service member if the employee is the spouse, son, daughter, parent, or next of kin of the service member;

“Covered service member” means:

- (a) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, or a serious injury or illness; or
 - (b) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
- (5) Eligible employees **may not take leave** under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and **members on the permanent disability retired list**.
 - (6) Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) for reasons related to or because of the affect by the service member's call-up or service.

The qualifying exigency must be one of the following:

- (a) Short-notice deployment;
- (b) Military events and related activities;
- (c) Childcare and school activities (including arranging for alternative childcare for the military member's child; arranging to transfer/enroll a military member's child into a new school or daycare; attending certain meetings with

school or daycare staff);

(d) Financial and legal arrangements;

(e) Non-medical Counseling;

(f) Rest recuperation (including spending time with the military member who is on leave during deployment);

(g) Post-deployment activities (including attending post-deployment reintegration briefings or other military programs that occur within 90 days of the conclusion of the active duty status); and

(h) Additional activities not encompassed in the other categories, but agreed to by the Dallas County and employee, including on timing and duration of leave.

(c) *Eligible family members.* Family members for whom the employee may take family and medical leave include:

(1) Spouse: ~~a legal husband or wife, including common law marriage. The employee must have a signed and filed legal Declaration of Informal Marriage considered lawful in the State of Texas for purposes of common law spouses. a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either: (1) was entered into in a State that recognizes such marriages; or (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.~~

(2) Parent: a biological, adoptive, step or foster parent or an individual who had day-to-day responsibility to care for and financially support the employee when the employee was a child, (in-laws are excluded);

(3) Child: a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis (in place of parent), who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time FMLA leave is to begin.

For purposes of son or daughter of a covered military service member or son or daughter on active duty or call to active duty status, the child who is on active duty or called to active duty may be of any age.

(4) Next of kin of a covered service member: the nearest blood relative other than the service member's spouse, parent, son, or daughter in the following order of priority: Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his nearest blood relative for purposes of military caregiver leave.

(d) *Defined leave time.* The defined 12-month period, as applicable to this article, will be calculated by taking the 12 consecutive calendar months forward from the date family

and medical leave begins. Only 12 weeks of family and medical leave will be granted per a consecutive 12-month period except for military caregiver leave where 26 weeks of leave during a 12-month period will be granted.

(e) *Serious condition.* A serious health condition means an illness, injury, impairment, or physical or mental condition that involves:

- (1) Patient care (e.g., overnight stay) in a hospital, hospice or residential medical care facility, including any subsequent treatment in connection with such inpatient care;
- (2) Any period of incapacity (e.g., inability to work, attend school or perform other regular daily activities) due to the serious health condition, including treatment for the serious health condition or recovery from the serious health condition;

Treatment includes but is not limited to examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.

- (3) Continuing treatment by a health care provider (e.g., medical doctors, podiatrists, optometrists, dentists, psychologists, Christian Science practitioner) for a serious health condition that results in a period of incapacity of more than three consecutive calendar days that involves treatment 2 or more times, within 30 days of the first day of incapacity or treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the health care provider and any subsequent treatment or period of incapacity relating to the same condition (see intermittent and reduced leave schedule);

For purposes of FMLA leave, a regimen of continuing treatment does not include taking over-the-counter medications, bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider. These activities are not themselves sufficient to constitute family and medical leave.

The requirement for treatment by a health care provider means an in-person visit to a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity.

- (4) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition which:
 - a. Requires periodic visits at least twice a year for treatment;
 - b. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - c. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.); or
- (5) Any period of incapacity due to pregnancy or for prenatal care.
- (6) Any period of incapacity due to permanent or long-term conditions for which treatment may not be effective (e.g. Alzheimer, severe stroke, or the final stages of a disease). The employee or family member must be under the continuing supervision of, but need not be receiving active treatment, by a health care

provider.

- (7) In the case of a member of the Armed Forces (including a member of the National Guard or Reserves) any treatment of an injury illness that was incurred by the service member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the service member's active duty was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the service member medically unfit to perform the duties of the service member's office, grade, rank, or rating; or
 - (8) In the case of a Veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period the person was a covered service member, (as defined by the Secretary of Labor) any treatment of a qualifying injury or illness incurred by a covered service member in the line of duty that may render the service member medically unfit to perform the duties of the service member's office, grade, rank, or rating; or
 - (9) Any period of outpatient services, with respect to a covered service member, whereby a member of the Armed Forces has been assigned to either a military medical treatment facility as an outpatient or a unit established for the purposes of providing command and control of members of the Armed Forces receiving medical care as outpatients.
- (f) *Family leave.* Both the mother and father are entitled to family leave for the birth, adoption or foster care placement of a child. This leave may begin before the birth of the child, if medically necessary. In the event that spouses work for the same employer, the combined total of their leave taken because of birth, adoption or foster care placement may not exceed 12 weeks. However, each spouse may be eligible for additional leave for other reasons. For example, if both spouses individually took six weeks off in connection with the birth of their child, they could each take an additional six weeks in the same 12-month period for a serious personal health problem.

Leave must be taken:

- (1) Within 12 months of the birth, adoption or foster care placement; and
 - (2) All at once, unless:
 - a. Agreed to otherwise by the elected official/department head; or
 - b. Intermittent or reduced schedule leave is medically required.
- (g) *Intermittent and reduced leave schedule.* Leave may be taken on an intermittent or reduced leave schedule when medically necessary. Intermittent leave is leave taken in separate periods of time due to a single illness or injury rather than for one continuous period of time. Reduced schedule leave means the employee works fewer than the normally scheduled hours during the week. In order to accommodate the employee's need to take intermittent leave or be placed on a reduced leave schedule, the following shall apply:
- (1) The employee may be temporarily transferred to another position to better accommodate the arrangement;
 - (2) The employee shall make every reasonable effort to schedule medical care outside of normal business hours, or with consideration to the needs of the department; and

- (3) The county is only required to grant this arrangement for FMLA after the birth or placement of a child for adoption or foster care if the elected official/department head approves or when medically necessary for recovery from or treatment of a serious health condition or chronic health condition of either the employee or an eligible family member, or to care for a covered service member with a serious injury or illness or due to a qualifying exigency (e.g. short-notice deployment, military events and related activities such as attendance at official ceremonies and programs sponsored by the military, family support or informational briefings, childcare and school activities, to make financial or legal arrangements, counseling, or post-deployment activities).
 - (4) An employee may not be required to take more leave than necessary to address the circumstance that precipitated the need for the leave.
 - ~~(5) Employees may be required to provide doctor's statements to support intermittent leave absences pursuant to a uniformly applied departmental attendance policy. For example, if a department uniformly requires employees who are absent for 3 consecutive days to provide a doctor's statement upon return to work, then employees who have been absent 3 consecutive days on intermittent family and medical leave are held to the same standard.~~
- (h) *Combined leave limits.* If two employees who are legal spouses wish to take leave to care for the same individual:
- (1) There is a combined leave limit of 12 weeks to care for a parent or a child due to birth, adoption or foster care placement;
 - (2) There is a combined leave of 26 weeks in a single 12-month period to care for a covered military service member; and
 - (3) There is no combined leave limit to care for an ill child or for the employee's own illness. In these circumstances, each county employee is entitled to 12 weeks leave during the defined 12-month period.

(Ord. No. 2000-485, §§ 5.04--5.11, 3-7-2000; Ord. No. 2002-1977, 10-29-2002; Ord. No. 2009-0883, 5-12-2009; Ord. No. 2014-0835)

Sec. 82-606. Requirements.

- (a) *Medical leave.* If the employee is requesting leave due to the employee's own or a covered family member's serious health condition, the employee and the relevant health care provider must supply appropriate medical certification (HR/CS form 16 for employee or HR/CS form 17 for family members). The county may also require a second opinion or third opinion at the county's expense. In the event of a third opinion, the third opinion will be binding. The county may request ~~require~~ recertification of a medical condition:
- (1) Every 30 days in connection with an absence by the employee unless the employee's medical certification indicates that the minimum duration of the condition is more than thirty days. If so, the county must wait until that minimum duration expires before requesting a recertification unless paragraph (2) of this section applies. In all cases, the county may request a recertification every six months in connection with an absence by the employee; if deemed necessary by the manager/supervisor;

(2) In less than 30 days if:

(a) When the employee requests an extension of leave;

(b) If the circumstances surrounding the leave change (for example, the employee has been absent continuously but the medical certification provides for intermittent leave for 1 to 2 episodes of 2 days each quarter);

(c) When the department receives information that casts doubt upon the continuing validity of the first certification; or

(d) The employer receives information that casts doubts upon the employee's stated reason for the absence.

(b) *Medical Certification.* It is the employee's responsibility to provide the manager/supervisor a complete and sufficient medical certification. In respect to certification for covered service members, certification of the qualifying exigency and/or for the serious injury or illness of the covered service member shall be required from the employee, and the employee shall be responsible for providing a complete and sufficient certification to the manager/supervisor. If the supervisor believes the medical certification is incomplete, the supervisor must return the medical certification to the employee, specify in writing what additional information is required, and allow the employee 7 calendar days to provide the requested information (HR/CS form 15, Designation Notice). A certification is incomplete if:

(1) If one or more of the applicable entries on the form have not been completed or;

(2) If the information provided is vague, ambiguous, or non-responsive.

Under no circumstances may the employee's supervisor contact the employee's health care provider. If further assistance is required, the supervisor shall contact the human resources/civil service department.

Failure to provide the requested medical certification in the allotted time may result in a delay or denial of the family and medical leave and subject the employee to disciplinary action, up to and including termination for violation of the attendance policy.

(c) *Employee leave request.* Under this Act, each employee is fully responsible for notifying the manager/supervisor of an injury or illness that will prevent him from working on a continuous basis for more than 3 days **or** that will require periodic absences for treatment and/or recovery from a serious health condition over the course of several months.

For example, an employee's minor child may not be able to go to school for 3 consecutive days due to the onset of an asthma attack **or** the health care provider has advised the employee to keep the child at home when the pollen count exceeds a certain level.

If leave is taken for a family and medical leave reason and the supervisor has not been made aware of the reason, the employee must notify the supervisor within two (2) business days of returning to work of the reason for the leave. The employee may not assert FMLA protection for the leave in the absence of such timely notification.

Failure to properly notify may result in disciplinary action being taken, up to and including

termination. When requesting family and medical leave:

- (1) If the event is unplanned, such as a sudden illness or injury of the employee or an eligible members of the employee's family, the employee or a responsible party shall notify the county within 24 hours (see section 82-607(c));
 - (2) If the event is planned, such as surgery or childbirth, then the employee shall make every reasonable effort to provide the county with at least 30 days' notice of the dates the employee will be absent from work (see section 82-607(b)).
- (d) *Supervisor's role.* The supervisor and employee must understand that the purpose of family and medical leave is to protect the job of an employee during a qualifying event. If an employee is out for more than three working days for a medical reason and has not requested family and medical leave by the fourth day or if an employee is periodically out for three or more working days in a 3-month period for a medical reason and has not requested family and medical leave, the supervisor shall:
- (1) Immediately send the employee all necessary forms for requesting such leave;
 - (2) Assess the medical absence in conjunction with the human resources/civil service department to determine if the employee is eligible for family and medical leave; the supervisor does not have to wait for a request from the employee; and
 - (3) Follow all outlined policies and procedures related to this matter.

If the supervisor fails to properly designate paid or unpaid leave as family and medical leave and the supervisor and/or the county later determines that the leave would qualify under FMLA guidelines, the entire leave period will be counted towards the employee's 12 weeks of FMLA entitlement. For example, if an employee has been off for a FMLA qualifying event and the department fails to send a notification, when the oversight is realized, a notice should be sent to the employee. The time charged to FMLA leave begins the day the employee's absence began.

- (e) *Leave limits.* Whether paid or unpaid, all eligible county employees are entitled to a total of 12 weeks of family and medical leave or 26 weeks of military care giver leave during a consecutive 12-month period. Employees shall be required to use appropriate leave balances during the leave. For example, if the leave is due to the illness or injury of the employee, family member, or covered military service member, all leave balances shall be used before moving to an unpaid leave status. If the leave is due to a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation, the employee shall use vacation, compensatory time, holiday credit and personal day before moving to unpaid leave status. Family and medical leave is only paid during the portion of leave for which the employee has sick leave, vacation, compensatory time, and personal leave accrued. Employees on paid leave will continue to accrue vacation and sick leave.

The employee shall use the following paid leave before moving to a without pay status:

- (1) Sick leave;
- (2) Vacation leave;
- (3) Compensatory time;
- (4) Holiday credit; and

(5) Personal day.

Each elected official/department head is responsible for ensuring that all reporting of time worked, accrual and use of leave, complies with county policies. Employees are not permitted to remain on the county's payroll if they are not on an approved leave of absence (with or without pay), which includes FMLA. Supervisors are responsible for accurate time reporting. The law requires that what is reported must be paid. Not reporting time accurately is considered falsifying an official document. Disciplinary action, up to and including termination, may be taken against employees and supervisors who falsify county documents related to work hours.

- (f) *Workers' compensation and family and medical leave.* All workers' compensation injuries which result in a "serious health condition," requiring the employee to be off work for more than three days or will require continuous treatment for which the employee will be absent from work will be designated as family and medical leave and will run concurrently. If workers' compensation payments are appropriate, they will be made in full compliance with all applicable laws. For employees who are off work due to a workers' compensation injury/illness, please refer to the county's workers' compensation policy.
- (g) *Pay increases and family and medical leave.* Only paid time covered under family and medical leave shall count as time worked for purposes of merit increases, step increases, promotional increases, etc. Any and all unpaid time will not be counted as time worked. Once family and medical leave has been exhausted, all other time (paid or unpaid) taken during the applicable 12-month period will not be counted as time worked for these purposes. These provisions also apply to employees who are out on workers' compensation due to work-related injuries.

However, if the county makes salary/benefit modifications to all employees or to employees in the absent or injured employee's specific job category, then the employee may be impacted by these changes, if he meets all specified requirements.

- (h) *Insurance coverage; payments.* While an employee is out on family and medical leave, the county will continue to provide group health benefits to the employee at the same coverage level, provided the employee continues to pay their portion of the premium through payroll deductions via sick, vacation, and compensatory leave accruals. Once the employee has exhausted all such accruals, in order to continue their insurance benefits, the employee must continue to make timely payments directly and as specified by the Auditor's Office. Additionally, pre-pay arrangements can be made directly with the Auditor's Office. If the employee's insurance is canceled due to non payment or late payment while on FMLA, the employee may be eligible for COBRA.

The employee can elect to cancel coverage entirely, or temporarily drop their dependent coverage, if applicable, by completing and submitting the Benefits Change Form within 31 days of the onset of the FMLA leave. For any coverage retained:

- (1) The employee must continue to pay all premiums; or
- (2) The employee may temporarily drop all insurance coverage (medical, dental, optional, FSA, etc.) during the family medical leave and reinstate the coverage on the same terms as prior to the leave, beginning the first day of the month

following return to work. If the employee elects to drop optional life, dependent life or long term care insurance while on FMLA, the employee has the option of re-electing these insurance benefits. However, the employee will be required to go through medical underwriting for insurance benefit reinstatement. If approved, the reinstatement will be effective the first of the month following underwriting approval.

The FSA Dependent Care Contributions will automatically stop while an employee is out on unpaid FMLA. FSA Dependent Care contributions will reinstate upon return to work.

- (3) If the employee fails to pay all owed insurance premiums on a timely basis as specified by the Auditor's Office, the insurance coverage will be terminated; and,
 - (4) Written notice will be mailed by the County Auditor to the employee and the elected official/department head at least 15 days before coverage is to cease advising that coverage will be dropped on a specific date. Coverage may cease retroactively to the end of the month any premiums were paid provided the 15 day notice was given. The County will recover the employee's share of any premium payments missed by the employee for any FMLA leave period during which the County maintains health coverage by paying the employee's share after the premium payments is missed.
- (i) *Return to work.* If an employee has been out on medical leave due to the employee's own health condition, the elected official/department head shall require a fitness for duty release from the employee's health care provider prior to allowing the employee to return to work. The fitness for duty release must be received from the employee no less than 48 hours prior to the return to work date. Law enforcement officers of the Sheriff's Department may require additional review by the employee health center physician before return to work. *See Appendix A: Sheriff's Department Civil Service Commission Rules and Regulations – Chapter 2.68 (Employee return to work after an illness/injury) for more information.*
- (j) *Reimbursement of premiums.*
- (1) If an employee is able to return to work (as defined in subsection (j) (3) of this section), but fails to do so, the employee may be required to reimburse the county for the premiums the county paid on the employee's behalf during the family and medical leave. The only exceptions to this requirement are:
 - a. Failure to return to work as a result of a documented serious health condition affecting the employee or a family member which would otherwise entitle the employee to leave under FMLA;
 - b. The result of other circumstances beyond the employee's control, such as a spouse being unexpectedly transferred to a job location more than 75 miles from the employee's worksite; or
 - c. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work.An employee will be required to submit appropriate documentation to substantiate reason for nonpayment of premiums.
 - (2) *Reimbursement of sick leave.* If an employee does not return to work after a

fitness for duty release from the health care provider has been issued, the employee will be required to reimburse the county for sick leave taken after the release date and disciplinary action may be taken up to and including termination.

- (3) *Return to work determination.* An employee who returns to work for at least 30 calendar days is considered to have returned to work. An employee who transfers directly from taking FMLA leave to retirement, or who retires during the first 30 days after the employee returns to work, is deemed to have returned to work.
- (k) *Additional time off.* If an employee requires time off beyond the 12 weeks of family medical Leave, the employee must submit a written request to the supervisor immediately upon learning of the need to extend the leave. Additional leave is considered to be Leave of Absence (LOA) and is granted at the discretion of the elected official/department head. See Leave of Absence policy found at Section 86-471 through 86-478. Failure to submit the written request before the family and medical leave period ends may result in the employee's separation of employment. This separation shall be treated as a voluntary resignation.
- If an employee is granted a leave of absence in a nonpaid status beyond the 12 weeks of family and medical leave, the employee will be required to elect continuation of health coverage under COBRA. The COBRA benefit period will run concurrently with the individual's approved leave of absence without pay status period. Any benefit coverage not continued during FMLA status will not be eligible to be continued under COBRA. For more information, see sections 82-335 and 82-442 through 82-446 of this Code.
- (l) *Other.* Falsification of documents is a violation of county policy which may result in the termination or denial of family and medical leave and also disciplinary action, up to and including termination.
- (m) *Violation of rights.* It is unlawful for the county to interfere with, restrain or deny the exercise of any rights provided under this article. If an employee believes his rights under the Family and Medical Leave Act have been violated, the employee should contact the human resources/civil service department.

(Ord. No. 2000-485, §§ 5.12--5.21, 3-7-2000; Ord. No. 2002-1977, 10-29-2002; Ord. No. 2009-0883, 5-12-2009; Ord. No. 2014-0835, 6-17-2014)

Sec. 82-607. Procedures.

- (a) *Purpose.* The procedures of this section are a guide for supervisors and employees when implementing the county's family and medical leave policy for planned and unplanned events.
- (b) *Planned events.* For planned events, the following action should be taken:
- Step 1: Within two working days of learning of an event for which the employee will need to take future family and medical leave, the employee should notify the supervisor in writing using P/CS form 13.
- Step 2: Within five (5) working days of receiving the employee's notice, the supervisor will provide the FMLA Eligibility Notice (Form HR/CS #14) that notifies the employee of his eligibility status. If eligible for the leave, a copy of this policy, a copy of the

employee's job description outlining essential job functions, and the medical certification form will be provided to the employee.

Step 3: Within 15 working days, the employee has a health care provider complete the appropriate medical certification form (Form HR/CS #16, P/CS #17, HR/CS #18, or HR/CS #19) and return it to the supervisor.

Step 4: If the supervisor believes the medical certification is incomplete and does not provide sufficient information to determine whether the leave is being taken for a FMLA-qualifying reason, the supervisor must return the medical certification to the employee, specify in writing what additional information is required, and allow the employee seven (7) calendar days to provide the requested information (Designation Notice, Form HR/CS #15).

Under no circumstances is the supervisor/manager allowed to contact the employee's health care provider. The supervisor/manager shall contact the human resources/civil service department for additional assistance.

Step 5: Within five (5) working days of receiving a sufficient medical certification from the employee's health care provider, the supervisor shall notify the employee if the event qualifies for FMLA by completing the Designation Notice (Form HR/CS #15) and sending it via regular and certified mail to the employee's home address or to the employee's email address whichever is appropriate.

Step 6: If possible, at least 15 days prior to the employee going out on leave, the supervisor shall prepare and submit all appropriate personnel/payroll forms placing the employee on family and medical leave to the auditor's office.

Step 7: Employee must coordinate all insurance payments with the auditor's office. Failure to timely pay required insurance premiums for elected insurance coverage will cause such coverage to cease.

Step 8: While out on leave, the employee must stay in touch with the supervisor as directed. If the supervisor does not specify how often the employee should check in with the supervisor, the employee should do so no less than every 30 days to inform the supervisor of his progress and to coordinate when the employee may be returning to work.

Step 9: When the employee is able to return to work, a fitness-for-duty release from the employee's health care provider must be provided if the absence was due to injury or illness of the employee. The fitness-for-duty release must be received no less than 48 hours prior to the return to work date.

Step 10: Upon learning of the employee's plan to return, the supervisor shall prepare all required personnel/payroll forms to return the employee to work and submit the paperwork to the county auditor's office.

Step 11: Any records or documents containing medical information or medical history on an employee must be filed in confidential medical files. Medical files must be maintained by the department separately from all other files.

(c) *Unplanned events.* For unplanned events, the following action should be taken:

Step 1: If an employee or an eligible dependent becomes ill or sustains an injury and the employee knows he will be out for more than three working days, the employee must notify or have a responsible person (family member, medical staff, etc.) notify the

employee's supervisor on same day or the next work day, or if an employee is out for more than three working days, the supervisor will provide the FMLA Eligibility Notice (Form HR/CS #14) that notifies the employee of his eligibility status within five (5) working days. If eligible for the leave, a copy of this policy, a copy of the employee's job description outlining essential job functions, and the medical certification form will be provided to the employee.

The supervisor shall follow the same notification procedures outlined in this procedure if an employee is periodically out for three working days or more in a 3-month period for a medical reason and has not requested family and medical leave,

Step 2: Within 15 working days, the employee has a health care provider complete HR/CS form 16 or HR/CS form 17 and return it to the supervisor.

Step 3: If the supervisor believes the medical certification is incomplete and does not provide sufficient information to determine whether the leave is being taken for a FMLA-qualifying reason, the supervisor must return the medical certification to the employee or employee's representative, specify in writing what additional information is required, and allow the employee or representative seven (7) calendar days to provide the requested information (Designation Form, HR/CS form 15).

Under no circumstances is the supervisor/manager allowed to contact the employee's health care provider. The supervisor/manager shall contact the human resources/civil service department for additional assistance.

Step 4: Within five (5) working days of receiving a sufficient medical certification from the employee's health care provider, the supervisor shall notify the employee if the event qualifies for FMLA by completing the Designation Notice (Form HR/CS #15) and sending it regular and certified mail to the employee's home address or to the employee's email address whichever is appropriate. If the event qualifies, the employee will be placed on leave effective the fourth day of absence.

Step 5: Employee must coordinate all insurance payments with the auditor's office. Failure to timely pay required insurance premiums for dependent and additional insurance coverage will cause such coverage to cease.

Step 6: While out on leave, the employee must stay in touch with the supervisor as directed. If the supervisor does not specify how often the employee should check in with the supervisor, the employee should do so no less than every 30 days to inform the supervisor of his progress and to coordinate when the employee may be returning to work.

Step 7: When the employee is able to return to work, a fitness-for-duty release from the employee's health care provider must be provided if the absence was due to injury or illness of the employee. The fitness-for-duty release must be received no less than 48 hours prior to the return to work date.

Step 8: Upon learning of the employee's plan to return, the supervisor shall prepare all required personnel/payroll forms to return the employee to work and submit the paperwork to the county auditor's office.

Step 9: Any records or documents containing medical information or medical history on an employee must be filed in confidential medical files. Medical files must be maintained by the department separately from all other files.

(Ord. No. 2000-485, § 5.22--5.24, 3-7-2000; Ord. No. 2002-1977, 10-29-2002; Ord. No. 2009-0883, 5-12-2009)

Sec. 82-608. Family and Medical Leave Forms.

Under the Family and Medical Leave Act, the county is required to provide several different types of notice to employees. These notices include general notice and postings, eligibility notice, notice of rights and responsibilities, and FMLA designation notice. The number of medical certification forms increased to address the extension of FMLA entitlement for military family leave. The following forms shall be used in the administration of family and medical leave:

- (a) Request for Family and Medical Leave (HR/CS #13);
- (b) Notice of Eligibility and Rights & Responsibilities (HR/CS #14);
- (c) Designation Notice (HR/CS #15);
- (d) Certification of Health Care Provider for Employee (HR/CS #16);
- (e) Certification of Health Care Provider for Family Member (HR/CS #17);
- (f) Certification of Serious Injury or Illness of Covered Service Member for Military Family Leave (HR/CS #18);
- (g) Certification of Qualifying Exigency for Military Family Leave (HR/CS #19);
- (h) Certification of Serious Injury or Illness of a Veteran for Military Caregiver Leave (HR/CS #20); and
- (i) Primary Caregiver-Medical Certification Form (HR/CS #33)

(Ord. No. 2009-0883, 5-12-2009; Ord. No. 2015-0380, 03-24-2015)

Secs. 82-609--82-639. Reserved.