



ADMINISTRATIVE POLICY MANUAL	SECTION HUMAN RESOURCES	NUMBER AM-702.2	EFFECTIVE DATE 7/11/2017
	SUBJECT  FAMILY AND MEDICAL LEAVE (FMLA)		PAGE  1 of 7

## POLICY:

The Family and Medical Leave Act of 1993 (FMLA) is a federal law that provides eligible employees with job protected leave when they need to take leave for specified family and medical reasons. It is the policy of Indian River County to comply with the provisions of FMLA by granting eligible employees leave for the reasons outlined below. Leave in accordance with FMLA is paid if the employee has sufficient sick or vacation leave balance or unpaid if all leave balances have been depleted. Use of paid leave must comply with applicable use of leave policies. Family and Medical Leave will run concurrently with an employee's paid leave time or other form of unpaid leave for absences permitted under FMLA and consistent with County policies.

It is the responsibility of every employee to read and understand this Policy. Questions should be referred to the Human Resources Department. In the event of a conflict between this Policy and the FMLA or the applicable FMLA regulation, the FMLA or FMLA regulations will govern.

## CIRCUMSTANCES THAT QUALIFY FOR FMLA:

For eligible employees, up to 12 workweeks of FMLA leave is available for one or more of the following purposes:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care, and to bond with the newborn or newly-placed child;
- To care for a spouse, son, daughter, or parent who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care;
- For a serious health condition that makes the employee unable to perform the essential function of his or her job, including incapacity due to pregnancy and for prenatal medical care; or
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

## WHAT IS A SERIOUS HEALTH CONDITION?

A serious health condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. The FMLA does not apply to routine medical examinations, such as a physical, or to common medical conditions, such as an upset stomach, unless complications develop.



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### WHAT IS INCAPACITY?

For all conditions “incapacity” means inability to work, including being unable to perform any one of the essential functions of the employee’s position, or inability to attend school, or perform other regular daily activities due to the serious health condition, treatment of the serious health condition, or recovery from the serious health condition.

### QUALIFYING EXIGENCY LEAVE:

When the employee’s spouse, son or daughter (of any age), or parent is a member of the Armed Forces (including the National Guard and Reserves) is on covered active duty or has been notified of an impending call or order to covered active duty, the eligible employee may take qualifying exigency leave under FMLA for the following exigencies:

- a) Short notice deployment (7 or fewer days’ notice);
- b) To make financial and legal arrangements to address the military member’s absence;
- c) To attend counseling when the need arises from the covered active duty or call to covered active duty status of the military member;
- d) To attend military events and related activities;
- e) To spend up to 15 calendar days with the military member who is on rest and recuperation leave;
- f) For childcare and related activities for the military member’s child while the member is on covered active duty;
- g) To attend post-deployment activities within 990 days of the end of the military member’s covered active duty or to attend to issues arising from the death of a military member while on covered active duty;
- h) Parental care activities for the military member’s parent who is incapable of self-care; and
- i) Any other event the employee and the employer agree is a qualifying exigency.

The 12-month period is measured on a “forward” basis. Leave tracked on this basis is measured forward from the date any FMLA leave first commences.

### LEAVE FOR COVERED SERVICEMEMBER CARE:

Eligible employees may take up to 26 workweeks of leave in a single 12-month period to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember who is:



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- A Current Servicemember: A current member of the Armed Forces, including a member of the U.S. 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 for a serious injury or illness; or
- A Veteran: A covered servicemember who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, and who was discharged within the previous five years before the employee takes military caregiver leave to care for the veteran.

Next of kin is the servicemember’s nearest blood relative, other than the service member’s spouse, parent, son, or daughter; unless the service member designates in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

A SERIOUS ILLNESS OR INJURY FOR PURPOSES OF COVERED SERVICEMEMBER CARE IS:

- For a Current Servicemember: An injury or illness that was incurred by the servicemember in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating. A serious injury or illness may also result from the aggravation or a pre-existing condition in the line of duty on active duty.
- For a Veteran: An injury or illness that was incurred in the line of duty when the veteran was on active duty in the Armed Forces, including any injury or illness that resulted from the aggravation of a preexisting condition in the line of duty on active duty. The injury or illness may manifest itself during active duty or may develop after the service member becomes a veteran.

An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reasons during the “single 12 month period” measured forward from the date an employee first takes leave for covered service member care and ends 12 months later regardless of the 12 month period established for other types of FMLA leave. Once an employee exhausts his or her 26 workweek entitlement, he or she may not take any additional FMLA leave for any reason until the “single 12 month-period” ends.



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ELIGIBILITY FOR FMLA AND SERVICEMEMBER CARE LEAVE:

Employees are eligible for FMLA leave if they:

- 1) have a cumulative (not necessarily continuous) 12 months of prior service within a period of 7 years, and
- 2) have worked at least 1250 hours during the 12 months immediately preceding the date on which the FMLA leave would begin.

USE OF INTERMITTENT LEAVE:

Under certain circumstances, leave may be taken on an intermittent or reduced schedule basis. An employee is permitted to take intermittent or reduced schedule FMLA leave when there is a medical need for such leave for an employee’s own serious health condition, to care for a spouse, parent, son or daughter with a serious health condition, or to care for a covered servicemember with a serious injury or illness. An employee is also entitled to use intermittent or reduced schedule FMLA leave for qualifying exigencies. An employee may request, but is not entitled to take intermittent FMLA leave for the birth and care of a newborn child or for the placement with the employee of a child for adoption or foster care; however, such leave is at the discretion of the Department Director and Human Resources Director.

If an employee needs FMLA leave intermittently or on a reduced schedule for planned medical treatment for their own serious health condition or for that of a qualifying family member, the employee must make a reasonable effort to schedule the treatment so as to not unduly disrupt the employer’s operations.

An employee may be temporarily transferred to an alternative position that better accommodates a recurring period of leave provided the pay and benefits are equivalent to those the employee had in the prior position. Once the need for intermittent or reduced schedule leave ends, the employee must be restored to the same or equivalent job as the job that the employee left when the leave started.

EMPLOYED SPOUSES:

Eligible spouses working for Indian River County are limited to a combined total of 12 workweeks of leave in a 12-month period to share for the following FMLA-qualifying reasons:

- The birth of a son or daughter or bonding with the newborn child,



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- The placement of a son or daughter with the employee for adoption or foster care, and bonding with the newly-placed child, and
- The care of a parent with a serious health condition.

Eligible spouses are also limited to a combined total of 26 workweeks in a single 12-month period to care for a covered service member with a serious injury or illness if each spouse is a parent, spouse, son or daughter, or next of kin of the service member. The limitation applies to a combination of military caregiver leave and leave for the other qualifying reasons above. The limitations do not apply to employees who are not legally married or to siblings or other relatives who are working together.

**PROVIDING NOTICE OF THE NEED FOR LEAVE:**

Unless extenuating circumstances exist, an employee must provide at least 30 days advance written notice to the Human Resources Department before FMLA leave is to begin. The failure to do so may cause delay or denial of leave.

If the need for leave is unforeseeable, the employee must provide notice as soon as practicable. For unforeseen leave, the employee must follow the normal procedure for contacting the supervisor to report an absence.

Employees generally will be notified by the Human Resources Department of your eligibility to take FMLA within 5 business days of receipt of a FMLA leave request. An employee will be notified if ineligible.

**PROVIDING EVIDENCE OF THE NEEDS FOR LEAVE:**

In most cases, the employee will be required to provide information to support the need for the FMLA leave. The required certification and supporting documentation will be based on the type of leave being requested. Certification forms and other requested documentation must be returned to the Human Resources Department within 15 days of the request (absent extenuating circumstances). Confidential information is maintained by the Human Resources Department. If the certification or supporting documentation is not sufficient, the employee will be notified and provided an opportunity to provide additional information.

**DESIGNATION OF THE LEAVE:**

After the certification form and/or supporting documentation has been reviewed by the Human Resources Department, the employee will be notified in writing whether the leave requested is FMLA covered.



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### SUBSTITUTION OF PAID LEAVE:

If the reason for the leave is covered by the County's sick or vacation leave policies and the employee has available leave balances, the employee is required to use accrued sick and vacation leave if applicable while taking FMLA leave (unless on workers compensation or County sponsored disability benefit). Once paid leave is exhausted, the employee will go on an unpaid leave for the remainder of the FMLA leave period. Qualifying absences, whether paid leave and unpaid leave, count toward the 12 or 26 workweek limit. FMLA leave designation is based on an FMLA qualified reason for the leave, and is not determined by paid or unpaid leave status.

### FMLA WHILE ON WORKERS COMPENSATION OR OTHER COUNTY SPONSORED DISABILITY BENEFIT

Leave taken while receiving a County sponsored disability benefit (AFLAC) or leave due to a workers compensation absence will be counted as FMLA leave if it meets the above criteria for a serious health condition. This leave would run concurrently with FMLA leave, and the employee will not be required to use paid sick or vacation leave while the employee is receiving disability pay or wage loss through workers compensation. The employee may elect to supplement his pay up to his normal wages (combined total), with eligible sick or vacation leave if sufficient leave balances are available.

### BENEFITS DURING FMLA LEAVE

Health care benefits will be maintained during FMLA leave. The employee must continue to pay the employee's share of premiums whether on paid or unpaid leave. If an employee falls more than 30 days behind in insurance payment, coverage may be canceled. In addition, if an employee fails to return to work at the expiration of the FMLA leave, under certain conditions, the County may recover any premiums it paid on the employee's behalf in order to maintain coverage.

### STATUS AND INTENT TO RETURN TO WORK FROM FMLA LEAVE

Consistent with other types of leave and absences from work, the employee on FMLA leave may be required to report periodically on the employee's status and intent to return to work.

### RETURN FROM LEAVE

At the conclusion of the FMLA leave period, the employee will be restored to the same or equivalent position held prior to the FMLA leave, unless the employee would not have



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otherwise been employed at the time of reinstatement (e.g., due to an intervening reduction in force or discharge for misconduct or poor performance). The County reserves the right not to rehire a “key” employee if rehire would cause substantial economic harm to its business. Key employees are generally those in the top 10% of compensation.

### RETURN TO WORK FITNESS FOR DUTY CERTIFICATION

An employee who takes leave for his own serious health condition will be required, as a condition of return to work, to obtain and provide certification that the employee is able to perform the essential functions of his job and identify if there are any work restrictions. The cost of the Fitness-for-Duty Certification is paid by the employee. The County may delay or deny restoration to employment if a Fitness-for-Duty Certification is not provided. The County will request a Fitness-for-Duty Certification for leave taken on an intermittent or reduced-leave schedule basis, if reasonable safety concerns exist regarding the employee’s ability to perform his duties based on the serious health condition for which the employee took leave.

### TAKING MORE THAN ALLOWED LEAVE

If an employee is unable to return to work after the FMLA leave ends, the employee may request a leave of absence consistent with County policy AM-703.1 LEAVE OF ABSENCE. This written request needs to be submitted prior to the expiration of the FMLA leave. The decision to approve the leave will be based on the likelihood of the employee’s return to the position held prior to taking leave. Eligible employees with a disability may request alternate placement into an available vacant position for which they qualify if they are able to perform the essential functions of that position. If an employee is unable to return to work within a reasonable time frame, the employee may be dismissed from employment.

JASON E. BROWN \_\_\_\_\_ DATE: \_\_\_\_\_