

## UNIFIED PERSONNEL SYSTEM

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**To:** The Honorable Chair and Members of the Unified Personnel Board

**From:** Holly J. Schoenherr, Director of Human Resources

**Date:** October 6, 2016

**Subject:** Proposed Housekeeping Updates to *Family and Medical Leave Act (FMLA) Handbook*

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### **Recommendation:**

It is recommended that the members of the Unified Personnel Board approve some minor housekeeping revisions to the *Family and Medical Leave Act (FMLA) Handbook*. There are no proposed changes to the FMLA program.

### **Background:**

The Unified Personnel Board adopted updated Personnel Rules at the December 3, 2015 meeting, to be effective January 1, 2016. As a result, Human Resources staff reviewed the website to update any references to the previous Personnel Rules. Several references to former Personnel Rules (specifically, Rules XXII and XI) were found in the *FMLA Handbook*.

It is recommended that the attached updated *FMLA Handbook* be adopted.

# Family and Medical Leave Act (FMLA) Handbook



*Revised October 2016*

## INTRODUCTION

The Family and Medical Leave Act of 1993 (FMLA) allows eligible employees to balance their work and family life by taking up to twelve weeks of unpaid leave for certain family or medical reasons. When family emergencies arise, requiring an employee to attend to his or her seriously ill children, parent(s), or be with newly-born or adopted children or children placed with the employee for foster care, or for their own or spouse's serious health condition, the employee needs reassurance that he or she will not need to choose between his or her job security and meeting these personal and family needs.

On January 28, 2008, the President signed the National Defense Authorization Act for Fiscal Year 2008 into law. It includes provisions expanding the federal Family and Medical Leave Act to guarantee job-protected leave in certain circumstances for employees who are family members of active duty military personnel.

The new law provides an extended period of leave for FMLA eligible employees who are covered family members to care for certain injured servicemembers. It also creates a new qualifying reason for leave for eligible employees whose spouse, son, daughter or parent is on, or called to, active duty.

## STATEMENT OF POLICY

Pinellas County recognizes its responsibilities to the employees to provide necessary medical and family leave and to the citizens of our community to provide timely and efficient service. Therefore, the Pinellas County Unified Personnel System has adopted this Family and Medical Leave Policy to comply with the requirements of the Family and Medical Leave Act of 1993 (FMLA) as amended from time to time. This policy will be interpreted to comply with future law changes as applicable. Pinellas County will not interfere with, restrain, or deny the exercise of any right provided by this policy. Furthermore, no employee will be discharged or discriminated against for opposing any practice that would violate FMLA, or because the employee was involved in a proceeding related to FMLA. Any covered person who experiences any of the conduct prohibited in this policy is requested to report such complaint as soon as possible verbally or in writing to their Department Head, the Office of Human Rights or the Director of Human Resources. All complaints will be taken seriously. Upon request by the Appointing Authority for whom the employee works, the Office of Human Rights will conduct an investigation. Alternatively, the Appointing Authority may conduct an investigation. Nothing in this policy abridges the rights of covered individuals from reporting any such complaints to outside enforcement agencies.

According to this policy and Pinellas County Personnel Rules, accrued Annual and/or Extended Illness leave shall be substituted for the unpaid leave provided for by the FMLA. Leave under this policy will be designated and used concurrently with all other types of paid and unpaid leave including absences under Workers' Compensation and Short or Long Term Disability.

While on FMLA leave the County will continue to pay for its portion of the employee insurances. The employee will be responsible for paying the employee contribution as well as any dependent or voluntary coverages they wish to maintain.

An employee returning from leave under this policy will be restored to his or her original job, or to an equivalent job, in accordance with relevant law and Unified Personnel System Rules. **However, the taking of leave under this policy does not entitle the employee to any greater or lesser likelihood of being restored to the employee's position, or an equivalent position, than the rights the employee otherwise would have had if the leave were not taken.** If leave taken under this policy is exhausted and the employee requests and is granted an extension under another leave rule, the guarantees of reinstatement and benefit coverage will not extend to the leave provided pursuant to other leave rules. In addition, an employee's use of FMLA leave will not result in the loss of any employment benefit that the employee earned or was entitled to **before** using FMLA leave.

The remainder of this handbook details general provisions and procedural guidelines. Examples of common situations and how family and medical leave under this policy apply are provided in the last section. Should you need further assistance in working with FMLA, please contact Employee Benefits, Human Resources Department at (727) 464-4570.

## GENERAL PROVISIONS

In accordance with the Family and Medical Leave Act of 1993 (FMLA), related Federal regulations and the provisions of this policy, family and medical leave will be granted up to a maximum of twelve (12) weeks per calendar year to eligible employees for reasons numbered 1 – 5 stated below (Note: Up to twenty six (26) weeks in a 12 month period will be granted for Servicemember Family Leave):

1. The birth of the employee's child and in order to care for the child (this also includes leave for a pregnant employee who becomes unable to work and leave for prenatal care);
2. The placement of a child with the employee for adoption or foster care in order to care for the child;

Entitlement to leave for the birth/placement of a child, for adoption or foster care will expire one year from the date of birth or placement. **NOTE:** If both parents work for the County, their combined leave entitlement for this reason is 12 weeks.

3. To care for a spouse, child or parent who has a serious health condition;
4. Because of a serious health condition that renders the employee unable to perform the function of the employee's job.
5. For one or more qualifying exigencies (as defined by statute and regulation) arising out of the fact that a spouse, or a son, daughter, or parent of the

employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.

6. **Servicemember Family Leave.** Subject to Section 103 of the FMLA and DOL regulations, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the covered servicemember. The single 12 month period begins on the first day the employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date.

Note: In addition to the limitation on leave for the birth/placement of a child for adoption or foster care, if both husband and wife work for the County, their combined leave for servicemember family leave is limited to 26 workweeks during a single 12-month period.

**A. Definitions.** As used throughout this policy, the following terms will have the indicated meaning.

1. **Eligible Employee.** Any exempt or classified status employee, provided they have been employed by the County for at least twelve (12) months (does not have to be consecutively) and have worked at least 1,250 hours during the twelve (12) months immediately preceding the commencement of the leave. For purposes of meeting the 1,250 hour requirement, exempt employees who have been actively at work the preceding 12 months will be deemed to have met this requirement.
2. **Spouse** means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized law.
3. **Parent** means a biological parent or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter as defined below. This term does not include parents "in law".
4. **Son or daughter** means a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability".
5. **"Incapable of self-care"** means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

6. "Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual. Regulations at 29 CFR §1630.2(h), (i) and (j), issued by the Equal Employment Opportunity Commission under the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, define these terms.
7. Serious Health Condition means an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity as defined in the DOL regulations implementing the FMLA, or any subsequent treatment in connection with such inpatient care.

Continuing treatment includes any one or more of the following:

Incapacity and treatment of more than three consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves treatment as defined in the DOL regulations implementing the FMLA.

Pregnancy or prenatal care.

Any period of incapacity or treatment for such incapacity due to a chronic serious health condition.

Any period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (i.e. strokes, Alzheimer's).

A period of absence to receive multiple treatments for an injury or condition which would result in incapacitation of more than three days if not treated such as cancer (chemotherapy), severe arthritis (physical therapy), and kidney disease (dialysis).

**NOTE:** Incapacity is defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom.

Treatment includes examination 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.

8. Health Care Provider: A doctor of medicine or osteopathy, or podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners and nurse-mid-wives authorized to practice under state law and performing within the scope of their practice; or Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts.
9. Reduced Leave Schedule: A leave that reduces the usual number of hours per work week, or hours per workday of an employee.

10. Intermittent Leave: Leave taken in separate blocks of time due to a single illness or injury.
11. Active Duty: As the term is defined in the Family & Medical Leave Act and the United States Code, as either may be amended from time to time.
12. Contingency Operation: As the term is defined in the Family & Medical Leave Act and the United States Code, as either may be amended from time to time.
13. Covered Servicemember: 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, for a serious injury or illness.
14. Outpatient Status: With respect to a covered servicemember, the status of a member of the Armed Forces assigned to:
  - a. a military medical treatment facility as an outpatient; or
  - b. a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
15. Next of Kin: Used with respect to an individual, means the nearest blood relative of that individual.
16. Serious Injury or Illness: For purposes of Servicemember Family Leave only, in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

## **B. Applying for Leave**

### **1. When advance notice is possible:**

Employees requesting leave must complete and submit a Pinellas County Leave Request. The request must indicate the reason for the leave, the duration of the leave, and the starting and ending dates for the leave. In cases where the employee wishes to use paid leave he/she MUST comply with any departmental requirements for giving advance notice in order to use paid leave. In cases where he/she is required to use paid leave, an employee's lack of notice does not prevent required use of paid leave.

If an employee is taking unpaid FMLA leave because of a birth or placement, or because of planned medical treatment, the leave request must be submitted at least 30 days before the leave begins.

## 2. **When advance notice is not possible:**

In the case of a serious health condition, if it is not possible to give such advance notice, the employee must submit the request as soon as possible. Initial notification in this case may be verbal. A family member, health care provider, or any person designated by the employee may notify the supervisor if the employee is unable to do so. When the initial request is verbal the supervisor is responsible for making sufficient inquiry into the nature of the leave so as to determine if the absence might qualify as a "serious health condition" as defined in this policy and verbally inform the employee (or caller) of any requirements under this policy. If there is insufficient information the supervisor may designate the leave as "FMLA pending" and request sufficient information in writing on the leave request form or otherwise. A leave request will be completed by the supervisor if the employee is unavailable to complete one. If requested information or documentation is not timely provided as requested, the leave request form should be amended and the leave reclassified as Non-FMLA.

**NOTE:** An employee forfeits the protections provided in this policy if he or she does not give notice of the reason for the leave within two (2) days after his or her return to work. The employee's time away could be counted as unscheduled under the County's attendance policy. However, the leave will not count as FMLA leave in such case.

## **C. Certification**

### 1. Medical Certification:

Employees requesting **unpaid leave** are required to provide certification supporting the need for leave. Such certification is required to be provided in a timely manner. Medical certification is not required for paid FMLA leave, with the exception of intermittent or reduced schedule leave unless it would be required under the relevant paid leave rules. Certifications supporting servicemember family leave must state that the servicemember suffers a serious injury or illness as defined herein.

An employee who requests unpaid leave for their own serious health condition, or for the serious health condition of a spouse, son, daughter or parent, or only in the case of servicemember family leave, the next of kin, must submit an approved medical certification form from the applicable health care provider within 15 calendar days of the request for leave. Leave will be granted in a FMLA "pending" status until the certification is received. Failure to provide timely certification will result in a denial of FMLA, characterization of the leave as unscheduled leave and may be the basis for discipline

The certification must sufficiently establish the need for leave. If for the employee's own serious health condition, it must also specifically state the employee is incapable of performing the functions of his/her job. The medical

certification will be maintained as confidential. The Appointing Authority may



request recertification after 30 days. For FMLA leave due to chronic illness recertification may be requested every six (6) months, but only in connection with an absence related to that illness.

The Appointing Authority may require for leave taken for the employee's own serious health condition, at the County's expense, that the employee obtain a second medical opinion by a health care provider of the County's choosing. If the opinions differ, a third opinion may be required, again at the County's expense, from a health care provider mutually agreed upon. This third opinion is final and binding.

2. Active Duty Certification:

Certification establishing an entitlement to qualifying exigency leave is required to be provided in a timely manner. Failure to provide timely certification will result in a denial of Family Medical Leave, characterization of the leave as unscheduled and may be the basis for discipline.

#### **D. Benefits During Leave**

While on any type of paid leave the County continues to pay its portion of the premium for insurances in force in accordance with other County policies.

During **unpaid** FMLA leave, the County will also continue to pay its portion of the employee's insurance premiums. Employees are responsible for paying for any dependent premiums, if they wish to continue such coverage. The actual terms of payment of the premiums must be agreed upon and put in writing prior to commencement of leave or within 15 calendar days of receiving notice if leave is unforeseeable. Employees must pay their portion of any premium for their own coverage. Failure to do so may result in termination of coverage.

If an employee fails to return to work after the expiration of the leave, the employee will be required to reimburse the County for its payment of health insurance premiums during the leave, unless the employee's failure to return is due to his/her own serious health condition, or circumstances beyond his control. In order to be considered as having "returned to work," the employee must return to the workplace for at least thirty (30) calendar days.

An employee who fails to return to work under the above described circumstances and is terminated, may have any non-reimbursed County-paid health insurance premiums deducted from their final pay.

#### **E. Fitness for Duty Certification for Employee's Own Illness**

A statement from the employee's health care provider of the employee's ability to return to work and perform the essential functions of his or her job with or without an accommodation shall be obtained as part of an Appointing Authority's uniformly applied policy or practice that requires all similarly situated employees who take leave for such conditions to so obtain. The requirement to provide such certification

shall be given to the employee at the time the leave is requested, as soon as the medical circumstances surrounding the need for leave are known or as soon as practicable. No second or third fitness for duty certifications may be required. An Appointing Authority may delay any reinstatement until the employee submits the required certification.

#### **F. Returning from Leave**

Employees must give at least two (2) working days notice of their intent to return to work when FMLA leave is taken for more than three consecutive weeks. Employees returning from leave under this policy shall be entitled to return to the position held at the time their leave commenced or to an equivalent position, in accordance with Federal law and Unified Personnel System Rules.

#### **G. Failure to Return**

If an employee fails to return to work at the expiration of their approved FMLA leave, they may be treated as having voluntarily resigned after three (3) days in accordance with [Unified Personnel Board Policy #8](#) unless an extension is granted by their Appointing Authority. A request for an extension of FMLA leave must be submitted to the employee's Appointing Authority prior to the expiration of the approved FMLA leave and medical certification may be required, as described in paragraph C. above, before granting such an extension. Such an extension may not be granted beyond twelve (12) weeks per calendar year (or 26 weeks in the case of servicemember family leave) available under this policy, however the Appointing Authority may grant additional Non-FMLA leave under any other applicable Rule. If the employee's request for an extension is denied and the employee fails to return to work, the employee will be subject to termination.

#### **H. Intermittent or Reduced Work Schedule Leave**

Employees may request intermittent leave or leave on a reduced leave schedule when it is medically necessary or, in the case of qualifying exigency leave, otherwise justified. **Intermittent leave or leave on a reduced leave schedule is not required to be granted when leave is for the birth or adoption of a child**, but may be granted at the discretion of the Appointing Authority.

The Appointing Authority may transfer an employee to an alternative position in order to accommodate the leave schedule providing the employee is qualified for the position and the transfer better accommodates the department's business needs.

#### **I. Compensation During Leave**

FMLA allows for up to 12 weeks of unpaid leave per calendar year; or solely in the case of servicemember family leave, 26 weeks in a 12-month period. Unless paid leave is utilized as provided herein, or as provided in other UPS rules, FMLA shall be unpaid. An employee who has accumulated Extended Illness (EI) leave must substitute the EI for unpaid FMLA leave because of a serious health condition that renders the employee unable to perform the functions of the employee's job. An

employee who has exhausted all his/her EI but has accumulated Annual Leave (AL) must substitute AL for unpaid FMLA leave for any reason leave is granted under FMLA, except that an employee may elect to go without pay if he has 40 hours or less accumulated AL. Exempt and Classified Salaried employees (as described in the [Personnel Rules Definitions](#)) may not be paid for partial day absences covered by FMLA unless they exhaust all accumulated leave. Employees may substitute accrued compensatory leave for otherwise unpaid FMLA.