

# Family Medical Leave (FMLA) Policy

Effective Date: September 2021

<b>Owner</b>	Board of Commissioners
<b>Reviewer(s)</b>	Human Resources
<b>Approver(s)</b>	Human Resources Director
<b>Related Policies</b>	Annual Leave Sick Leave Parental Leave
<b>Related Standards</b>	n/a
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## 1. PURPOSE

To outline the use of the Family Medical Leave Act (FMLA) for employees to care for themselves and their immediate family members.

## 2. SCOPE

This policy applies to All Employees who have worked at least 12 months **and** at least 1250 hours. If you have questions regarding this policy, contact Human Resources.

## 3. GOVERNING LAWS, REGULATIONS & STANDARDS

Guidance	Section
Family and Medical Leave Act (FMLA)	All Regulations
Uniformed Services Employment and Reemployment Rights Act (USERRA)	All Regulations
And all other applicable laws and regulations	

## 4. DEFINITIONS

**Child:** A biological, adopted, or foster child, stepchild, legal ward, or a child of an employee standing *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of mental or physical disability. This age limit does not apply for purposes of military FMLA (i.e., leave for a qualifying exigency or to care for a covered service member.)

**Covered Active Duty:** Deployment to a foreign country as a member of the regular Armed Forces or as a result of a federal call to active National Guard or Reservist military duty in support of a contingency operation (typically during a war or declared national emergency.)

**Healthcare Provider:** A doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to manual manipulation of the spine to correct a subluxation shown on X-ray), nurse practitioner, nurse midwife, clinical social worker, physician assistant, Christian Science Practitioner listed with the First Church of Christ, Scientist, in Boston Massachusetts, and other provider to whom the County's Benefit Plan will pay benefits.

**Immediate Family Member:** An employee's spouse, child (son or daughter), and parent [The term "parent" does not include a parent "in-law."]

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**In loco parentis**: Having day-to-day responsibilities to care for and financially support a child. A biological or legal relationship is not necessary.

**Intermittent Leave**: Leave taken in separate blocks of time, rather than continuous time off.

**Leave of Absence (LOA)**: Absence from work for an extended period of time.

**Parent**: A biological, adoptive, step, or foster father or mother or any other individual who stands or stood *in loco parentis* to an employee when the employee was a child. "Parent" does not include a parent-in-law.

**Qualifying Exigency**: An activity that requires leave because the employee's spouse, child, or parent is a military member on covered active duty or on notice of upcoming covered active duty.

**Reduced Schedule Leave**: Using leave to reduce the number of hours worked each workday or each workweek.

**Rolling 12-month Period or "Rolling Year"**: The 12-month period measured backward from the date an employee uses any Family Medical Leave. Under the "rolling year," each time an employee takes FMLA, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

**Spouse**: A husband or wife in a lawful marriage.

**Workweek**: The number of hours an employee typically works during a seven-day period. Most full-time employees have a 40-hour workweek. Appropriate pro rata adjustment is made for part-time employees. Employees required to work overtime, may have a workweek of more than 40 hours.

## 5. POLICY

Family and Medical Leave (FMLA) is a benefit and entitlement intended to assist eligible employees with balancing work/life demands by providing job-protected time off from work for qualifying reasons. The County shall administer FMLA in accordance with the federal Family and Medical Leave Act (FMLA) and related regulations. Any updates to applicable federal law or regulation take precedence over provisions within this policy that are found to be in conflict.

Employers will not interfere with, restrain, or deny the rights provided to an employee by the FMLA, but shall be entitled to require appropriate medical certification and/or validation of family member status to determine eligibility for FMLA.

The County will not discriminate or retaliate against an individual for exercising any FMLA right.

Nothing in this policy or the FMLA shall be construed as limiting the County's right to discipline, terminate, or otherwise manage its employees as it deems appropriate. However, the use of FMLA cannot be considered as a negative factor in any employment decision.

## 6. PROCEDURES

### A. Employee Eligibility

To be eligible for FMLA leave, an employee must:

- Have worked at least 12 months for Cobb County (need not be consecutive);
- Have worked at least 1,250 hours for Cobb County over the preceding 12 months

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(these hours must be actual hours worked, not to include holidays, sick leave and vacation leave);

- Work at a location where there are at least 50 Cobb County employees within 75 miles;
- Have a qualifying reason for the absence; and,
- Have not already exhausted the available Family and Medical Leave entitlement for the 12-month period.

**NOTE:** Absences covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA) will count toward meeting the eligibility requirements.

## B. FMLA Qualifying Reasons & Leave Entitlement

FMLA leave may be taken for the following reasons:

- Birth of the employee's child, or to care for the employee's newborn child;
- Placement of a child with the employee for adoption or foster care;
- To care for an immediate family member (employee's spouse, child, or parent) with a serious health condition; or
- Because of the employee's serious health condition which makes the employee unable to perform the functions of the employee's job.
- To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin (i.e., nearest blood relative; generally applies to sibling, uncle, aunt, first cousin) of the service member who has a serious injury or illness incurred in the line of duty on active duty or has a pre-existing injury or illness aggravated by active duty for which he/she is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list or is 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 the National Guard and Reserves, at any time during the five-year period preceding the date on which the veteran undergoes medical treatment, recuperation or therapy.
- A qualifying need 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) to a foreign country for one or more of the following situations:
  - (i) short-notice deployment; (ii) military events and related activities; (iii) financial and legal arrangements; (iv) counseling; (v) rest and recuperation; (vi) attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member; and (vii) additional activities (including the timing and duration thereof) as agreed upon by the County and the employee.

**NOTE:** If the employee is on FMLA leave to care for a family member with a serious health condition and the family member dies during the FMLA leave, the FMLA leave ends at that time. Under such circumstances, additional leave may be requested.

## C. Spousal Limitations:

- If an employee's spouse is also a County employee, the couple is limited to a combined total of 12 workweeks of FMLA during the rolling 12-month period for any one of the following qualifying reasons:
  - For the birth of the employee's child, including care for the child after birth; and,
  - For the placement of a child with the employee for adoption or foster care, including care for the child after placement.

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- If an employee's spouse is also a County employee, the couple is limited to a combined total of 26 workweeks of Military Caregiver FMLA during a 12-month period.
- Each spouse is entitled to use the remainder of his/her individual FMLA entitlement for other qualifying reasons.

## D. Serious Health Conditions

An illness, injury, impairment, or physical or mental condition that involves either:

1. An overnight stay in a hospital, hospice, or residential medical facility and any period of incapacity or treatment related to the reason for inpatient care; or,
2. Continuing treatment by a health care provider that involves at least one of the following:
  - Incapacity of more than three (3) consecutive days, plus treatment that includes at least two (2) medical examinations or one examination followed by treatment under the healthcare provider's supervision;
  - Prenatal care or incapacity because of pregnancy;
  - Periodic treatment or incapacity for a chronic serious health condition that:
    - Requires periodic visits (at least twice per year) to a health care provider for treatment,
    - Continues over an extended period of time, and
    - May cause episodic rather than continuing periods of incapacity;
  - Permanent or long-term condition for which treatment may not be effective; or,
  - Absence to receive multiple treatments for:
    - Restorative surgery following an accident or other injury, or
    - For a condition that, if left untreated, would likely result in incapacity of more than three (3) consecutive days (i.e., chemotherapy, dialysis, etc.)

## E. Duration of Leave

Eligible employees may receive up to 12 workweeks of unpaid leave or paid leave depending upon the employee's leave balance, during any "rolling" 12-month period, measured backward from the date that any FMLA leave is to be used. FMLA leave for the birth or placement of a child for adoption or foster care must be concluded within 12 months of the birth or placement.

When leave is to care for an injured or ill service member, an eligible employee may take up to 26 work weeks of leave during a single 12-month period to care for that service member. Leave to care for an injured or ill service member when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period during which the 26 weeks of military caregiver leave is available begins on the first day that an employee takes military caregiver leave and ends twelve months after that date, regardless of the rolling 12-month period that Cobb County utilizes for determining available leave for other FMLA-qualifying reasons.

## F. Intermittent/Reduced Schedule Leave

- Eligible employees may take FMLA leave intermittently (in blocks of time), or by reducing their normal weekly or daily work schedule, when medically necessary for their own or an immediate family member's serious health condition.

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- Intermittent or reduced schedule leave is not permitted for birth of a child, to care for a newborn child, or for placement of a child for adoption or foster care (unless Parental Leave has also been requested and approved to run concurrent with the FMLA entitlement – see Parental Leave Policy for more information).
- Employees who require intermittent leave or reduced-schedule leave must try to schedule their leave so that it will not disrupt the department's operations. However, if this is not possible, the employee may be temporarily reassigned to a different position for which the employee is qualified and that better accommodates the recurring absences while the employee uses FMLA on an intermittent or reduced schedule basis for any of the following reasons:
  - Planned medical treatment, including recovery;
  - Birth of the employee's child, including care of the newborn child (if running concurrently with Parental Leave); and,
  - Adoption or foster care, including care of the newly placed child.
- While in the temporary position, the employee will receive pay and benefits equivalent to the original position; however, the duties need not be equivalent. An employee will not be assigned to a temporary position that represents a hardship for the employee. The Department will return the employee to the original position or an equivalent position at the end of the temporary assignment. The employee will not be required to continue in the temporary assignment beyond the date on which the employee is able to resume the regular work schedule.

## G. Notice and Certification Requirements

1. When seeking FMLA, employees may be required to provide:

- Thirty (30) days advance notice of the need to take FMLA leave, if the need is foreseeable, or notice as soon as practicable in the case of leave that is not foreseeable 30 days in advance;
- Medical, military circumstance or other certification supporting the need for leave must be returned before the employee's leave begins, or if not possible, **within 15 days** of the department's request to provide the certification. If the employee fails to do so, Cobb County may delay the commencement of the employee's leave or withdraw any designation of FMLA leave, in which case the employee's leave of absence would be unauthorized and would subject the employee to discipline up to and including dismissal;
- Second or third medical opinions and periodic re-certifications;
- Periodic reports as deemed appropriate during the leave regarding the employee's status and intent to return to work;
- Additional medical documentation to support extensions of leave beyond the original certification period; and;
- Medical documentation of fitness for duty before returning to work, if the leave was due to the employee's serious health condition.

Failure to comply with the foregoing requirements may result in delay or denial of leave or reinstatement from leave.

2. Supporting Documentation

- Cobb County requires its employees to submit appropriate supporting documentation for the use of FMLA. Examples of supporting documentation include:
  - The attending healthcare provider's certification of a serious health condition serving as the basis for FMLA;
  - The attending healthcare provider's certification of a covered service member's serious injury or illness;

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- Certification of a qualify family relationship; and,
  - Copy of the spouse's, child's, or parent's orders for covered active duty that supports the qualifying exigency.
- If an employee does not submit supporting documentation when giving notice of the need for FMLA, the Department may request such documentation. The Department must allow the employee at least 15 calendar days from the date of the Department's request to provide the requested documentation.
- Failure to submit timely, complete, and sufficient supporting documentation may result in delay or denial of FMLA.
- If clarification is needed based on the documentation provided [i.e. incomplete healthcare certification form], you should:
  - Give the employee an additional seven (7) days to obtain the needed information.
  - If the employee still does not provide sufficient information, or additional clarification is needed, the Department can request that HR contact the healthcare provider to obtain only the necessary information in order to make a decision on whether the documentation supports the need to utilize FMLA. HR will obtain the employee's written authorization prior to contacting the healthcare provider.
  - Direct supervisors are not permitted to contact the healthcare provider.
- If there is reason to doubt the validity of a medical certification, contact Human Resources for guidance.

### 3. Recertification

- Recertification may be required no more often than every 30 calendar days or after the minimum duration of the condition identified on the previous certification expires, whichever occurs later. The Department may require an earlier recertification for the following reasons:
  - The employee requests an extension of leave;
  - The circumstances (e.g., duration or frequency of absences) described within the previous certification change significantly; or,
  - The employer receives information that casts doubt on the continuing validity of the previous certification.
- Cobb County requires recertification at least every ninety (90) days to maintain medical insurance.

### 4. Notice Requirements

Departments are responsible for meeting all employer notice requirements for Family Medical Leave. Requirements include: a posted notice in the workplace, a general notice to employees, an Eligibility, Rights & Responsibilities notice to each employee who requests FMLA or whose leave may qualify for FMLA protection, and a Designation notice for each employee whose absence is being considered for FMLA protection.

- **Posted & General Notices:**
  - **Posted Notice** – Each Department will post and keep posted in conspicuous places where notices to employees and applicants are typically posted, notice explaining the provisions of the FMLA and how to file a complaint.
  - **General Notice** – In addition to the posted notice, each Department must include the information from the FMLA poster in its handbook (if applicable) or other written material on leave and benefits, or distribute such information to new employees upon hire.
  - Both the posted and general notices may be posted or distributed electronically to meet these requirements.
- **Eligibility, Rights and Responsibilities Notice** – Once an employee requests FMLA, or once the Department becomes aware that an employee's leave may qualify for FMLA, the Department must notify the employee, within five (5) workdays (unless there are extenuating circumstances, such as an emergency office closure, delay notice) of the following:

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- Whether the employee meets the employment eligibility criteria for FMLA;
  - Whether the employee has any remaining FMLA available; and,
  - The employee's rights and responsibilities for taking FMLA.
  - If the employee did not submit supporting documentation with a request for FMLA, the Department should include in this notice any requirement to provide such documentation and give a deadline for submission that is 15 calendar days after the notice is provided to the employee.
- Designation Notice – Once the Department has sufficient information to determine whether the leave qualifies for FMLA protection (i.e., after receiving supporting documentation), the Department must notify the employee within five (5) workdays (unless there are extenuating circumstances, such as an emergency office closure, delay notice) whether the leave will be designated as FMLA and count against the employee's entitlement.
  - The Designation Notice can be combined with the Eligibility, Rights & Responsibilities Notice if the Department has sufficient information to designate the leave as FMLA at the time it becomes aware of the employee's need for leave.
  - A Family and Medical Leave denial must include at least one reason for denial. Prior to denying any FMLA leave, contact Human Resources for guidance.

## H. Conditions of Leave/ Use of Accrued Leave

Employees who are granted FMLA leave must use any accrued paid leave beginning with the effective date of the leave. Upon exhaustion of any paid leave, the remainder of any FMLA leave will be unpaid. For FMLA leaves other than those taken to care for a service member with a serious injury or illness, the combination of paid and unpaid FMLA leave will not exceed 12 workweeks in any 12-month period. If the employee is taking FMLA leave because of his or her own serious health condition and continues to be medically unable to work beyond the 12 weeks allowed by FMLA, the employee may request and may be approved for medical leave and allowed to continue using accrued leave. However, this extension will not be counted as FMLA leave. Employees do not accrue leave while in an unpaid status.

## I. Benefits Coverage

Employees taking unpaid FMLA are responsible for contacting the Human Resources Department to arrange for the payment of benefit plans.

During an employee's FMLA, benefits will be administered in accordance with the benefits procedures. Eligibility for continued benefits is not dependent on the employee's pay status. To ensure there is no disruption or discontinuance of benefits, an employee who is out of the workplace on an approved leave of absence should contact the Human Resources Benefits Division for information about protecting and maintaining his/her benefits.

## IMPORTANT NOTICE

EMPLOYEES TAKING UNPAID FMLA MUST CONTACT THE HUMAN RESOURCES DEPARTMENT TO ARRANGE FOR THE PAYMENT OF BENEFIT PLANS DURING THEIR LEAVE. FAILURE TO MAKE THE REQUIRED PAYMENTS WILL RESULT IN THE TERMINATION OF PLAN COVERAGE.

## J. Job Restoration

Upon returning from FMLA leave, eligible employees normally will be restored to their original job or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.



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Exceptions are permitted when the original position is abolished during the FMLA leave due to reduction in force, reorganization, or if the employee would not otherwise have been employed even if leave had not been taken.

## K. Failure to Return after FMLA Leave

Any employee who fails to return to work as scheduled after FMLA leave may be subject to dismissal from employment. Employees who exceed their FMLA entitlement without extension(s) of their leave approved under other appropriate leave provisions may be subject to dismissal from employment.

## L. Tracking/Charging FMLA Leave

1. Each Department is responsible for charging all leave that qualifies for FMLA protection against an employee's entitlement.
2. Only the amount of leave actually taken may be counted toward the employee's FMLA entitlement.
3. Holidays:
  - If a holiday falls within a full week of FMLA, then it counts toward the FMLA entitlement as if it were a workday.
  - If a holiday falls within a week during which an employee used FMLA for only part of the week, then the holiday does not count toward the FMLA entitlement.

## M. Record Maintenance

All documentation pertaining to FMLA requests must be submitted to Human Resources for placement in the employee's electronic confidential medical file, which is separate from the electronic personnel file.

## 7. EXCEPTIONS

Exceptions to this policy must be justified and approved in advance by the County Manager and/or the Board of Commissioners.

## 8. NON-COMPLIANCE

Violations of this policy may include disciplinary action according to applicable County policies.

## REVISION HISTORY

Version ID	Date of Change	Author	Rationale
v. 1.0-2021	9/2021	Human Resources	Adoption



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