

**ROCKWALL COUNTY**  
**POLICY ON FMLA/MFLA**

The Federal Family & Medical Leave Act of 1993 (FMLA) as amended in 2009 requires employers with 50 or more employees to provide eligible employees with unpaid leave. There are two types of leave available, including the basic 12-week leave entitlement (Family and Medical Leave), as well as the Military Family Leave entitlements (MFLA) described in this policy. The required forms for FMLA/MFLA may be obtained from the County Human Resources Department.

**ELIGIBILITY**

To be eligible for benefits under this policy, an employee must:

- a. have worked for Rockwall County at least 12 months (it is not required that these 12 months be consecutive; however, a continuous break in service of 7 years or more will not be counted toward the 12 months); and
- b. have worked at least 1250 hours during the previous 12 months.

**LEAVE**

Family or medical leave under this policy may be taken for the following situations:

- a. the birth of a child and in order to care for that child;
- b. the placement of a child in the employee's home for adoption or foster care;
- c. to care for a spouse, child, or parent with a serious health condition;
- d. the serious health condition of the employee that makes the employee unable to perform the essential functions of their job;
- e. a qualifying exigency arising out of the fact that an employee's spouse, child or parent is a covered military member of the Armed Forces (Regular, Reserve or National Guard), deployed to a foreign country or has been notified of an impending call or order to active duty in a foreign country;
- f. to care for a covered service member (Regular, Reserve or National Guard) with a serious injury or illness if the employee is the spouse, child, parent or next of kin (nearest blood relative) of the service member; or
- g. to care for a covered veteran who is undergoing medical treatment, recuperation or therapy, for a serious injury or illness and who was a member of the Armed Forces (Regular, Reserve or National Guard) at any time during the period of 5 years preceding the date on which the veteran began that medical treatment, recuperation or therapy.

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**SERIOUS HEALTH CONDITION**

Serious health condition of the employee shall be defined as a health condition that requires overnight inpatient care at a hospital, hospice, or residential care medical facility or continuing treatment by a health care provider.

Serious health condition of a spouse, child, or parent shall be defined as a condition which requires overnight inpatient care at a hospital, hospice, or residential care medical facility, or a condition which requires continuing care by a licensed health care provider.

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

- a. a period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
  1. treatment two or more times within 30 days of incapacity, or
  2. treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment by a health care provider. This treatment must occur within the first seven days of incapacity;
- b. any period of incapacity due to pregnancy or pre-natal care;
- c. any period of incapacity or treatment due to a chronic serious health condition that requires periodic visits to a health care provider and continues over an extended period of time;
- d. any period of incapacity which is permanent or long term due to a condition that treatment is not effective;
- e. any period of incapacity or absence to receive multiple treatments by a health care provider.

**EXIGENCY LEAVE - MILITARY**

Eligible employees may take FMLA leave when an employee's covered military member (spouse, child of any age, or parent) is on active duty or called to active duty status in a foreign country. The following qualify as exigency leave:

- a. leave may be taken to address any issue that arises because the covered military member was given seven or less days' notice for active duty deployment in support of a contingency operation. An eligible employee may take up to 7 days beginning on the date the covered military member receives the call or order to active duty;
- b. leave may be taken to attend any official ceremony, program or event sponsored by the military that is related to the active duty or call to active duty status in a foreign country of a covered military member;

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- c. leave may be taken to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations or the American Red Cross that are related to active duty or call to active duty status in a foreign country of a covered military member;
- d. leave may be taken to arrange for alternative childcare, provide childcare on an urgent basis (not as routine), to attend school or daycare meetings, to enroll or transfer covered children under age 19 when it is necessitated by the active duty or call to active duty status of a covered military member;
- e. leave may be taken to make or update financial or legal arrangements to address the covered members absence while on active duty or call to active duty status in a foreign country;
- f. leave may be taken to act as the covered military member's representative before a governmental agency for obtaining, arranging or appealing military service benefits while the covered military member is on active duty or call to active duty status in a foreign country and for a period of 90 days following the termination of the covered member's active duty status;
- g. leave may be taken to attend counseling provided by someone other than a health care provider for oneself, for the covered military member or covered child provided the need for counseling arises from the active duty status or call to active duty status in a foreign country of a covered military member;
- h. leave may be taken to spend time with a covered military member who is on a short-term, temporary, rest and recuperation leave during the period of deployment. Eligible employees may take up to fifteen (15) days of leave for each instance of rest and recuperation;
- i. leave may be taken to attend post-deployment activities for the covered military member for a period of 90 days following the termination of the covered member's active duty status;
- j. leave may be taken to address issues that arise from the death of a covered military member while on active duty status in a foreign country;
- k. certain activities related to the care of the military member's parent who is incapable of self-care where those activities arise from the military member's covered active duty; or
- l. leave may be taken to address any other additional events that may arise out of the covered military member's active duty or call to active duty status in a foreign country provided the County agrees the leave shall qualify as an exigency and agree to both the timing and the duration of such leave.

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**UP TO 12 WEEKS LEAVE**

Up to 12 weeks leave per 12 month period may be used under this policy.

The County will measure the 12 month period as a rolling 12 month period measured backward from the date an employee uses any leave under this policy. All leave taken under this policy during the prior 12 month period shall be subtracted from the employee's 12 week leave eligibility, and the balance is the leave the employee is entitled to take at that time.

**CARE FOR A COVERED SERVICE MEMBER OR COVERED VETERAN WITH A SERIOUS INJURY OR ILLNESS**

An eligible employee is entitled up to 26 workweeks of leave to care for a covered service member or covered veteran with a serious injury or illness during a single 12-month period:

- a. the single 12 month period begins on the first day the eligible employee takes FMLA to care for covered service member or covered veteran and ends 12 months after that date;
- b. if an eligible employee does not take all of their 26 workweeks during this 12 month period, the remaining part of the 26 workweeks of leave entitlement to care for the covered service member or covered veteran is forfeited;
- c. this leave entitlement is applied on a per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered service members or covered veterans or to care for the same covered service member or covered veteran with a subsequent serious illness or injury, except that no more than 26 workweeks may be taken within any single 12 month period.

**HUSBAND AND WIFE EMPLOYED WITH COUNTY**

If a husband and wife both work for the County the maximum combined leave they shall be allowed to take in any 12 month period for the birth or placement of a child, or care for a parent with a serious health condition is 12 weeks. The combined limit is 26 weeks in a single 12-month period if leave is to care for a covered service member or covered veteran with a serious injury or illness.

**USE OF PAID LEAVE**

If an employee has accrued leave, the employee shall be required to use the paid leave (such as compensatory time, vacation and sick) as detailed below. The remainder of the leave shall be unpaid.

**A. Serious Health Condition**

An employee taking leave because of their own serious health condition, or the serious health condition of an eligible family member shall be required to first use paid sick leave, then earned compensatory time, vacation and any other paid leave, with the remainder of the 12 week leave period being unpaid leave.

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**B. Birth of Child**

An employee taking leave for the birth of a child shall be required to use first paid sick leave, then earned compensatory time, vacation and any other paid leave for the recovery period after the birth of the child and prior to being on unpaid leave.

**C. After the Recovery Period from Birth of a Child**

After the recovery period from giving birth to a child, the employee shall be required to first use all earned compensatory time, then vacation and other available paid leave, except for sick leave, with the remainder of the 12 week leave period being unpaid leave.

**D. Adoption or Foster Care**

An employee who is taking leave for the placement of a child in the employee's home for adoption or foster care shall be required to first use all earned compensatory time, then vacation and other available paid leave, except for sick leave, with the remainder of the 12 week leave period being unpaid leave.

**E. Qualifying Exigency for a Covered Military Member**

An employee who is taking leave for a qualifying exigency for a covered military member shall be required to first use all earned compensatory time, then vacation and other available paid leave, except for sick leave, with the remainder of the 12 week leave period being unpaid leave.

**F. Care of a Covered Service Member or Covered Veteran**

An employee taking leave for the care of a covered service member or covered veteran shall be required to first use all earned sick leave, then earned compensatory time, vacation, and any other paid leave, with the remainder of the 26 week leave period being unpaid leave.

**MAXIMUM AMOUNT OF LEAVE**

The maximum amount of paid and unpaid leave that may be used under this policy in any 12 month period is 12 weeks, except for qualifying leave to care for a covered military member with a serious injury or illness with the maximum leave being 26 weeks in a single 12 month period.

**INSURANCE CONTRIBUTIONS**

While on leave under this policy, the County shall continue to make its normal contribution for the employee's Health Care insurance coverage at the same rate as if the employee had been

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actively at work. The employee shall be required to make his/her normal contribution for Health Care coverage and for any other insurance coverage for which the employee would normally pay, or the coverage will be discontinued. Payment for coverage shall be made through regular payroll deduction while the employee is on paid leave. While on unpaid leave, the employee shall be required to pay for premiums due to the County no later than 30 days after the due date which the County sets or the coverage shall be discontinued.

**COBRA**

At the end of the 12 weeks leave all eligible employees will be offered COBRA if they are unable to return to work, except for the care of an injured covered military member where the eligible employee will be offered COBRA at the end of 26 weeks in a single 12 month period.

**INTERMITTENT LEAVE OR REDUCED WORK SCHEDULE**

Intermittent leave under this policy shall be allowed only where it is necessary for the care and treatment of the serious health condition of the employee, the employee's eligible family member, or the care of a covered military member or covered veteran.

A reduced schedule under this policy shall be allowed only where it is necessary for the care and treatment of the serious health condition of the employee, the employee's eligible family member, or the care of a covered military member or covered veteran.

All work time missed as the result of intermittent leave or a reduced work schedule under this policy shall be deducted from the employee's 12 week leave eligibility. If the time missed is for the care of a covered military member or covered veteran with a serious injury or illness the time will be deducted from the employee's 26 week leave eligibility in a single 12 month period.

**CERTIFICATION FOR LEAVE**

The County shall have the right to ask for certification of the serious health condition of the employee or the employee's eligible dependent when the employee requests or is using leave under this policy.

The employee must respond to the request within 15 days of the request or provide a reasonable explanation for the delay. If an employee does not respond, leave may be denied.

The County may send out to an employee who has been out for 3 or more days a Medical Certification to determine the employees FMLA eligibility. The employee should have their physician complete and return the certification within 15 days of receipt to be eligible for FMLA. Failure to return the medical certification may result in denial of FMLA.

The County may require subsequent medical recertification. Failure to provide requested certification within 15 days, except in extraordinary circumstances, may result in the delay of further leave until it is provided.

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- a. Certification of the **serious health condition of the employee** shall include:
1. the date the condition began;
  2. its expected duration;
  3. the diagnosis of the condition;
  4. a brief statement of the treatment; and
  5. a statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee's job.
- b. Certification of the **serious health condition of an eligible family member** shall include:
1. the date the condition began;
  2. its expected duration;
  3. the diagnosis of the condition;
  4. a brief statement of treatment; and
  5. a statement that the patient requires assistance and that the employee's presence would be beneficial or desirable.
- c. Certification for leave taken because of a **qualifying exigency** shall include:
1. a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or called to active duty status in a foreign country;
  2. the dates of the covered military member's active duty service;
  3. a statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency, sufficient to support the need for leave;
  4. the approximate date on which the qualifying exigency will start and end;
  5. if the request is for an intermittent leave or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency; and
  6. if the qualifying exigency involves meeting with a third party, appropriate contact information such as: name, title, organization, address, telephone number, fax number and e-mail address and a brief description of the purpose of the meeting.
- d. Certification for leave taken for a **serious injury or illness of a covered military member or covered veteran** shall include:
1. if the injury or illness was incurred in the line of duty while on active duty;
  2. the approximate date on which the illness or injury occurred and the probable duration;
  3. a description of the medical facts regarding the covered military members or covered veterans health condition, sufficient to support the need for care;

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4. if the covered military member is a current member of the Regular Armed Forces, the National Guard or Reserves and the covered military member's branch, rank and unit currently assigned to;
5. the relationship of the employee and the covered military service member or covered veteran; or
6. in lieu of certification, an ITO (invitational travel orders) or an ITA (invitational travel authorizations) issued is sufficient certification for an eligible employee to be allowed to take FMLA to care for a covered military member. The employee may be required to provide confirmation of the family or next of kin relationship to the seriously injured or ill covered military member or covered veteran.

If the employee plans to take intermittent leave or work a reduced schedule, the certification shall also include dates and the duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced schedule. Certification for intermittent or reduced schedule leave may be requested every 6 months in connection with an eligible absence.

**SECOND AND THIRD OPINION**

The County shall have the right to ask for a second opinion from a physician of the County's choice, at the expense of the County, if the County has reason to doubt the certification, except FMLA to care for a seriously injured or ill covered service member supported by an ITO or ITA.

If there is a conflict between the first and second certifications, the County shall have the right to require a third certification, at the expense of the County, from a health care practitioner agreed upon by both the employee and the County, and this third opinion shall be considered final.

**REQUEST FOR LEAVE**

Except where leave is unforeseeable, an employee shall be required to submit, in writing, a request for leave under this policy to his or her immediate supervisor.

Where practicable, an employee should give his or her immediate supervisor at least 30 days notice before beginning leave under this policy. Where it is not reasonably practicable to give 30 days' notice before beginning leave, the employee shall be required to give as much notice as is reasonably practicable. If an employee fails to provide 30 days notice for foreseeable leave, the leave request may be denied until at least 30 days from the date the County receives notice.

**RETURN TO WORK**

An employee who is taking leave because of their own serious health condition will be required to provide a Fitness-for-Duty certification prior to returning to work.



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Employees returning from leave under this policy who have not exceeded the 12 week maximum allowed under this policy shall be returned to the same job or a job equivalent to that the employee held prior to going on leave. Employees who have not exceeded the 26 week maximum, in a single 12 month period, allowed to care for a seriously ill or injured covered military member, shall be returned to the same job or a job equivalent to the job they held prior to going on leave.

If an employee is placed in another position, it will be one which has equivalent status, pay, benefits, and other employment terms, and one which entails substantially equivalent skill, effort, responsibility, and authority.

The County shall have no obligation to reinstate an employee who takes leave under this policy and who is unable to return to work after using the maximum weeks of leave allowed under this policy, or who elects not to return to work after using the maximum leave. This includes employees who may still have sick leave or vacation leave available.

Except in situations where the employee is unable to return to work because of the serious medical condition of the employee or an eligible family member, or other situations beyond the control of the employee, an employee who does not return to work after using the maximum leave allowed under this policy shall be required to reimburse the County for all medical premiums paid by the County while the employee was on leave without pay.

**LEAVE WITHOUT PAY**

While on leave without pay under this policy, an employee shall not earn vacation, sick leave, be eligible for holidays, or earn other benefits afforded to employees actively at work, except for those stated in this policy.

**FMLA BASIC REQUIREMENTS AND REGULATIONS**

Any area or issue regarding family and medical leave which is not addressed in this policy shall be subject to the basic requirements of the Federal Family and Medical Leave Act (FMLA) and the regulations issued to implement it.