

Family and Medical Leave Act (FMLA)

Cass County complies with the Family and Medical Leave Act (FMLA) and will grant up to 12 weeks of leave during a 12-month period to eligible employees (or up to 26 weeks of military caregiver leave).

The purpose of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. If there are any questions, concerns, or disputes with this policy, please contact County Human Resources.

Eligibility

To be eligible for leave under this policy, employees must meet **all** the following requirements:

- Have worked at least twelve (12) months for Cass County.
- Have worked at least 1,250 hours for Cass County over the twelve (12) months preceding the date the leave would commence.
- Currently work at a location where there are at least fifty (50) employees within seventy-five (75) miles.

The 12 months of employment do not have to be consecutive. All periods of absence from work due to or necessitated by service in the uniformed services are counted as hours worked in determining eligibility.

Reasons for Leave

To qualify as FMLA leave under this policy, the leave must be for any one reason, or a combination, of the following reasons as defined in the Act:

- The birth of a child or placement of a child with the employee for adoption or foster care.
- To care for a spouse, child, or parent who has a serious health condition.
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job.
- For any qualifying exigency arising out of the fact that a spouse, child, or parent is a military member on covered active duty or on call to covered active-duty status.
- To care for a covered service member with a serious injury or illness.

See **Definitions section for FMLA's explanation of serious health condition, spouse, child, parent, qualifying exigency, covered active duty, covered service member, next of kin of covered service member, and serious injury or illness.*

Amount of Leave

An eligible employee can take up to 12 work weeks of FMLA leave during any 12-month period. Cass 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. Each time an employee takes leave, the County will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for FMLA military caregiver leave during a single 12-month period. For this military caregiver leave, Cass County will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

Eligible spouses who both work for Cass County may only take a combined total of 12 weeks of leave for the birth of a child, adoption, or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious

health condition. Both may only take a combined total of 26 weeks of leave to care for a covered injured or ill service member (if each spouse is a parent, spouse, child or next of kin of the service member).

Intermittent Leave or a Reduced Work Schedule

Employees may take FMLA leave in one consecutive block of time, may use the leave intermittently (take in day or one-hour increments periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member) in a 12-month period.

County Human Resources may initiate the process to temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care.

For the birth, adoption or foster care of a child, County Human Resources and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the County's operations subject to the approval of the employee's health care provider.

Employee Notice Requirement

All employees requesting FMLA leave must provide verbal or written notice to County Human Resources of the need for FMLA leave and the anticipated timing and duration of the leave, if known. Employees may do this by either requesting FMLA leave specifically, or explaining the reasons for leave so as to allow Cass County Human Resources to determine that the leave is FMLA-qualifying. Employees do not have to share a medical diagnosis but would need to provide enough information to Human Resources to determine if the leave qualifies under FMLA protection.

Calling in "sick," will not be considered sufficient notice for FMLA leave under this policy. Employees must communicate with County Human Resources to determine if absences are potentially FMLA-qualifying. If employees fail to explain the reasons for leave, the leave may be denied as FMLA. When employees seek leave due to FMLA-qualifying reasons for which County Human Resources has previously provided FMLA-protected leave, they must specifically reference the qualifying reason for the leave or the need for FMLA leave.

When the need for leave is foreseeable, the employee must provide County Human Resources with at least 30 days' notice. When the need for FMLA leave is not foreseeable, the employee must comply with the County Human Resource's usual and customary notice and procedural requirements for requesting leave as soon as practicable. Employees who fail to give 30 days' notice for foreseeable leave without a reasonable excuse for the delay, or otherwise fail to satisfy FMLA notice obligations, may have FMLA leave delayed or denied.

Submit Medical Certifications Supporting Need for FMLA Leave (Unrelated to Requests for Military Family Leave)

Depending on the nature of FMLA leave sought, employees may be required to submit medical certifications supporting their need for FMLA-qualifying leave. As described below, there generally are three types of FMLA medical certifications: an initial certification, a recertification, and a return to work/fitness for duty certification.

It is the employee's responsibility to provide County Human Resources with timely, complete, and sufficient medical certifications as outlined under the Family Medical Leave Act. County Human Resources shall inform employees if submitted medical certifications are incomplete or insufficient. County Human Resources may deny FMLA leave to employees who fail to timely cure deficiencies or otherwise fail to timely submit requested medical certifications.

Whenever County Human Resources deems it appropriate to do so, it may waive its right to receive timely, complete and/or sufficient FMLA medical certifications.

Initial Medical Certifications

Employees requesting leave because of their own, or a covered relation's, serious health condition, or to care for a covered service member, must supply County Human Resources medical certification supporting the need for such leave from their health care provider or, if applicable, the health care provider of their covered family or service member. If employees provide at least 30 days' notice of medical leave, they should submit the medical certification before leave begins.

If County Human Resources has reason to doubt initial medical certifications, it may require employees to obtain a second opinion at Cass County's expense. If the opinions of the initial and second health care providers differ, County Human Resources may, at its expense, require employees to obtain a third, final and binding certification from a health care provider designated or approved jointly by County Human Resources and the employee.

Medical Recertifications

Depending on the circumstances and duration of FMLA leave, County Human Resources may require employees to provide recertification of medical conditions giving rise to the need for leave. County Human Resources will notify employees if recertification is required and will give employees at least 15 calendar days to provide medical recertification.

Return to Work/Fitness for Duty Medical Certifications

Unless notified that providing such certifications is not necessary, employees returning to work from FMLA leaves that were taken because of their own serious health conditions must provide County Human Resources with medical certification confirming they are able to return to work and the employees' ability to perform the essential functions of the employees' position, with or without restrictions. County Human Resources will provide employees wishing to return to work with a Fitness for Duty Form to be completed by the employee's health care provider. County Human Resources may delay and/or deny job restoration until employees provide return to work/fitness for duty certifications.

Submit Certifications Supporting Need for Military Family Leave

Upon request, the first time employees seek leave due to qualifying exigencies arising out of the active duty or call to active duty status of a covered military member, County Human Resources may require employees to provide: 1) a copy of the covered military member's active duty orders or other documentation issued by the military indicating the covered military member is on active duty or call to active duty status and the dates of the covered military member's active duty service; and 2) a certification from the employee setting forth information concerning the nature of the qualifying exigency for which leave is requested. Employees shall provide a copy of new active-duty orders or other documentation issued by the military for leaves arising out of qualifying exigencies arising out of a different active duty or call to active-duty status of the same or a different covered military member.

When leave is taken to care for a covered service member with a serious injury or illness, County Human Resources may require employees to obtain certifications completed by an authorized health care provider of the covered service member. In addition, and in accordance with the FMLA regulations, County Human Resources may request that the certification submitted by employees set forth additional information provided by the employee and/or the covered service member confirming entitlement to such leave.

Employer Notice Requirements

Employees requesting FMLA leave are entitled to receive written notice from County Human Resources telling them whether they are eligible for FMLA leave and, if not eligible, the reasons why they are not eligible.

When eligible for FMLA leave, employees are entitled to receive written notice of: 1) their rights and responsibilities in connection with such leave; 2) County Human Resource's designation of leave as FMLA-qualifying or non-qualifying, and if not FMLA-qualifying, the reasons why; and 3) the amount of leave, if known, that will be designated as FMLA and counted against the employee's leave entitlement.

County Human Resources may retroactively designate leave as FMLA leave with appropriate written notice to employees provided County Human Resource's failure to designate leave as FMLA-qualifying at an earlier date did not cause harm or injury to the employee. In all cases where leaves qualify for FMLA protection, County Human Resources and the employee can mutually agree that leave be retroactively designated as FMLA leave.

Employee Status and Benefits During Leave

Cass County will continue an employee's health benefits during the leave period at the same level and under the same conditions as if the employee was continuously at work.

When employees are receiving pay from Cass County during FMLA leave, Cass County will continue to make payroll deductions to collect the employee's share of insurance premiums from the employee's paycheck in the same manner as if the employee was actively working.

If FMLA leave is unpaid, employees must continue to pay their portion of the group health premiums and, if applicable, employee-paid supplemental life and disability premiums through a method determined by County Human Resources and the employee.

The payment must be received by County Human Resources within 30 days of the regularly scheduled payroll deduction date. If the payment is not received in time, the employee's group health insurance and employee paid supplemental life and disability benefits may be cancelled.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, Cass County will require the employee to reimburse the County the amount it paid for the employee's health insurance premium during the leave period.

During FMLA leave, ETO and Vacation will not accrue. FMLA leave does not constitute a break in service for purposes of longevity, seniority, insurance, or retirement benefits. Employees are not eligible for paid holidays while on FMLA leave.

Employee Status After Leave

Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one that is virtually identical in terms of pay, benefits and working conditions. County Human Resources may initiate the process to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to the County's operations. Key employees will be given written notice at the time FMLA leave is requested of his or her status as a key employee.

Use of Paid and Unpaid Leave

Although FMLA leave is unpaid, during any FMLA leave, wherever permitted by state law, employees must concurrently use paid time off in their leave banks (VACATION, ETO, COMP) prior to being eligible for unpaid leave. Employees may reserve up to 40 hours in their choice of leave bank(s) for use after their return from FMLA. If an employee receives replenished ETO for concurrent STD leave in the amount of 40 hours or more, they will not be allowed to reserve additional hours. The use of paid time off during an FMLA leave of absence shall not extend the length of an employee's FMLA leave.

Disability leave and any other potentially qualifying County leave of absence, may run concurrently with FMLA. For example, when an employee is approved for six weeks of short-term disability for childbirth, the six weeks will be designated as FMLA leave and counted toward the employee's 12-week FMLA entitlement. The employee will then be required to substitute earned paid leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement.

Intent to Return to Work from FMLA Leave

On a basis that does not discriminate against employees on FMLA leave, County Human Resources may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

No Work While on Leave

The taking of another job while on family/medical leave or any other authorized leave of absence is grounds for immediate termination, to the extent permitted by law.

Definitions

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. This can include conditions with short-term, chronic, long-term, or permanent periods of incapacity.

Spouse means a husband or wife as defined or recognized in the state where the individual was married and includes individuals in a common law or same-sex marriage. Spouse also includes a husband or wife in a marriage that was validly entered into outside of the United States if the marriage could have been entered into in at least one state.

Child 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" at the time that FMLA leave is to commence.

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law."

Qualifying exigency includes short-notice deployment, military events and activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

Covered active duty for members of a regular component of the Armed Forces, means duty during deployment of the member with the Armed Forces to a foreign country. For a member of the Reserve components of the Armed Forces, means duty during the deployment of the member with the Armed Forces to a foreign country under a federal call or order to activate duty in support of a contingency operation, in accordance with 29 CR 825.102.

The next of kin of a covered service member is the nearest blood relative, other than the covered service member's spouse, parent or child in the following order of priority: blood relatives who have been granted legal custody of the 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 or her nearest blood relative for purposes of military caregiver leave under the FMLA.

Covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status or on the temporary disability retired list for a serious injury or illness.

Serious injury or illness is one that is incurred by a service member in the line of duty on active duty that may cause the service member to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the service member's active duty and that were aggravated by service in the line of duty on active duty.

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