**Family Medical Leave of Absence**

The federal Family and Medical Leave Act (FMLA) allows eligible employees to take job-protected, unpaid leave for certain qualifying reasons. There are two types of leave available, including the basic 12-week entitlement and military family leave entitlements described in this policy. [*COMPANY*]’s FMLA policy is governed by all provisions of the FMLA.

**Eligibility for FMLA**

In order to be eligible for an FMLA leave, an employee must:

* Have at least 12 months of service (which need not be continuous) for [*COMPANY*] in the last seven years (unless the break in service is due to or necessitated by the employee’s USERRA covered service obligation);
* Have worked at least 1,250 hours for [*COMPANY*] during the 12 months prior to commencement of the leave;
* Be employed at a worksite where 50 or more employees are employed by [*COMPANY*] within 75 miles of that site; and
* Have a qualifying reason for leave.

**Basic Family Leave**

Employees who meet the eligibility requirements described above are eligible to take up to 12 weeks of leave during a 12- month period, defined later, for one, or more, of the following reasons:

1. The birth of employee’s son or daughter, and to care for the newborn child during the first 12 months following the birth;
2. The placement with the employee of a son or daughter for adoption or foster care, and to care for the newly placed child;
3. To care for employee’s spouse, son, daughter, or parent with a serious health condition;
4. Because of an employee’s own serious health condition that makes the employee unable to perform the functions of the employee’s job.

If a husband and wife are both employed by the company, they will be limited to a combined total leave of twelve weeks if the leave is taken for the birth of, or to care for, a newborn child; for the placement of, or to care for, a newly adopted or foster care child; or to care for a sick parent.

The Company designates the method used to calculate the 12-month period in which employees can take FMLA leave for qualifying reasons as *[insert here as applicable: 1) a calendar year; 2) a fixed 12-month “leave year,” such as a fiscal year, a year required by State law, or a year starting on an employee's “anniversary” date; 3) the 12-month period measured forward from the date the FMLA leave begins; or, 4) a “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.]*

#### Military Family Leave

There are two types of Military Family Leave available.

1. *Qualifying Exigency Leave*. Employees meeting the eligibility requirements described above may be entitled to use up to 12 weeks of FMLA Leave to address certain qualifying exigencies. Leave may be used if the employee’s spouse, son, daughter, or parent (the military member or member) is on covered active duty status (or has been notified of an impending call or order to covered active duty). Qualifying exigencies may include:

* *Short-notice deployment*: Leave (up to 7 calendar days) to address any issue that arises from an impending call or order to active duty in support of a contingency operation seven days or less prior to the date of deployment.
* *Military events and related activities*: Leave to attend any official ceremony, program, or event sponsored by the military related to the covered active duty or call to covered active duty.
* *Child and school activities*: Leave to arrange or provide for childcare or school-related activities.
* *Financial and legal arrangements*: Leave to make or update various financial or legal arrangements.
* *Counseling*: Leave to attend counseling (by someone other than a health care provider) when necessary as a result of the covered active duty or call to covered active duty status.
* *Rest and recuperation*: Leave to spend time with the military member who is on short-term, temporary, Rest and Recuperation leave during the period of deployment (up to 15 calendar days each instance).
* *Post-deployment activities*: Leave to attend arrival ceremonies (including funeral or memorial services), reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the military member’s covered active duty status.
* *Parental care*: Leave to arrange for alternative care for a parent of the military member when the parent is incapable of self-care; to provide care for a parent of the military member on an urgent, immediate need basis; to admit to or transfer to a care facility; or to attend meetings with staff at a care facility, when such care or arrangements are necessitated by the covered active duty or call to covered active duty status of the military member.
* *Additional activities*: Leave to address other events arising from the military member’s covered active duty or call to covered active duty status agreed upon between employer and employee.

1. *Leave to Care for Covered Servicemember*. Employees who meet the eligibility requirements for FMLA leave may take up to 26 weeks of leave in a single 12-month period to care for a *covered servicemember* with a serious injury or illness incurred in the line of duty on active duty, if the employee is the spouse, son, daughter, parent, or “next of kin” of the covered servicemember. *Covered Servicemember* is defined as: 1) A current 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; or 2) A *covered veteran* who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

*Covered veteran* means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves) and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

*Serious injury or illness* is defined as being incurred by the member in the line of duty on active duty in the Armed Forces, (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and for covered veterans, manifested itself before or after the member became a veteran.

In cases where both husband and wife are employed by [*COMPANY*], they will be limited to a combined total of 26 weeks’ leave during the 12-month period if leave is taken for this reason.

#### Requesting Use of FMLA

*Foreseeable*: If an employee’s need for FMLA leave is foreseeable, the employee must give [*COMPANY*] at least 30 days’ prior notice of the need to take leave.

*Unforeseeable*: When 30 days’ notice is not possible, employees must give notice as soon as practicable (generally within two business days of learning of the need for leave, except in extraordinary circumstances). Failure to provide such notice may be grounds for delaying or denying leave.

Employees should contact [*insert here*] to request a family and medical leave or with any questions about FMLA.

#### Certification

Employees must provide sufficient information for [*COMPANY*] to determine if the leave may qualify for FMLA protection, as well as the anticipated timing and duration of the leave. Vague, ambiguous, or non-responsive information will be considered insufficient. Employees also must inform [*COMPANY*] if the requested leave is for a reason for which FMLA leave was previously taken or certified. Refusal or failure to give reasons for requesting FMLA leave or to provide the requested certification may result in the delay or denial of FMLA leave.

Employees will be required to provide a medical certification if the leave request is: 1) for the employee’s own serious health condition, 2) to care for a family member’s serious health condition, or 3) military caregiver leave. Employees must provide the requested certification within 15 calendar days unless it is not practicable under the particular circumstances to do so despite the employees’ diligent, good faith efforts. If the certification is not complete or is insufficient, employees will be required to obtain and provide the additional information necessary to make the certification complete and sufficient. Failure to provide the requested certification in a timely manner may result in delay or denial of the leave. If an employee refuses to provide a certification, his/her leave request may be denied and the employee will adhere to the [*refer* *to the name of your Company’s attendance policy*].

If necessary, [*COMPANY*] may contact the health care provider directly to clarify or authenticate a medical certification provided by an employee.

[*COMPANY*], at its expense, may require the employee to obtain a second opinion if it has a reasonable question regarding the medical certification provided by the employee. If the second health care provider's opinion differs from the original medical certification, [*COMPANY*], at its expense, may require a third, mutually agreeable, health care provider to conduct an examination and provide a final and binding opinion.

Separate certification may also be required regarding the nature of the family member’s military service and/or the existence of a qualifying exigency, such as active duty orders.

When a leave is requested, [*COMPANY*] will notify the employee of the requirement for certification and when it is due. Failure to provide complete and sufficient certification as required may result in the delay or denial of FMLA leave.

#### Recertification

[*COMPANY*] will require recertification of a medical condition for employee’s own serious health condition or to care for a family member every six months in connection with an absence. Recertification may be requested more often under some circumstances, such as with an extension of leave or if circumstances described in the previous certification have changed.

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#### Reporting While on Leave

If leave is taken because of an employee’s own serious health condition or to care for a family member, employees must report periodically on their status and intent to return to work. In addition, employees must give notice as soon as practicable (within two business days if feasible) if the dates of leave change, are extended, or initially were unknown.

#### Use of Supplemental Pay for Unpaid leave

*[Include as applicable: FMLA leave is unpaid leave, although employee may be eligible for short or long-term disability payments and/or workers' compensation benefits under those insurance plans or policies. If entitled to receive money from these sources, leave will be considered "paid leave" for the period during which money is received.*

*The employer and employee may mutually agree to supplement the disability benefits pay with any other form of paid time off benefits the employee may have (e.g., vacation, sick days, etc.) if State law permits. However, [COMPANY] may not require the employee to supplement the disability benefits, nor can the employee unilaterally elect to do so.]*

#### Use of Paid Time Off Benefits for Unpaid Leave

If leave is "unpaid," employees will be required [*revise as needed if substitution is at the employee’s option*] to substitute accrued [*insert as applicable: paid time off, vacation, sick days, and personal days*] for "unpaid" FMLA leave. The ability to substitute accrued paid leave is determined by the terms and conditions of those leave and time off policies.

FMLA leave runs concurrently with other types of leave [*insert as applicable: paid vacation, short-term disability, worker’s compensation, etc**.*]. The substitution of paid leave time for unpaid leave time does not extend the 12-week or 26-week leave period. Further, in no case should the substitution of paid leave time for unpaid leave time result in receipt of more than 100% of an employee’s salary.

#### Benefits and Protections

During an approved FMLA leave, [*COMPANY*] will maintain the employee’s health coverage as if the employee continued to be actively employed. If paid leave [*insert applicable paid leaves, such as short-term disability benefits, sick days, vacation, etc.)*] is substituted for unpaid FMLA, [*COMPANY*] will deduct the employee’s portion of the health plan premium as a regular payroll deduction. If the leave is unpaid, [*COMPANY*] will provide instruction and the employee must make other arrangements to pay his/her portion of the premium. Health care coverage will cease if premium payment is more than 30 days late. If payment is more than 15 days late, a letter will be sent to this effect. If payment is not received within 15 days after the date of this letter, healthcare coverage will be dropped for the duration of leave, retroactively to the date the premium payment was due, due to nonpayment of premiums.

If an employee elects not to return to work for at least 30 calendar days at the end of the leave period, he/she will be required to reimburse [*COMPANY*] for the cost of the health benefit premiums paid by [*COMPANY*] for maintaining coverage during the leave, unless employee cannot return to work because of a serious health condition or other circumstances beyond his/her control.

On return from an approved FMLA leave most employees will be returned to their same position held when leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. In addition, if health care coverage lapsed because of lack of premium payment, upon return, health care coverage will be restored without preexisting condition, waiting period or medical examination.

Use of an approved family and medical leave will not result in the loss of any employment benefit that accrued prior to the start of an employee’s leave.

During the leave, the employee will not accrue any additional employment benefits [*insert as applicable, such as vacation, sick leave, holiday pay, bereavement leave, 401k contributions, etc.*] except as specifically required by law or as provided in the Company’s written policies and plan documents. Benefits accrued by the employee before the leave began will be restored to the employee when he/she returns to work.

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#### Intermittent and Reduced Schedule Leave

Leave because of a serious health condition or serious injury or illness may be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced leave schedule (reducing the usual number of hours worked per workweek or workday) if medically necessary. Leave due to qualifying exigencies may also be taken on an intermittent basis. Intermittent or reduced schedule leave not medically necessary but requested by the employee (such as time to care for a newborn or newly placed child) may be approved at the discretion of [*COMPANY*].

If leave is unpaid, [*COMPANY*] will reduce an employee’s salary based on the amount of time actually worked. Employees will not be charged FMLA leave for periods during which they are working. FMLA leave will be accounted for in increments of [*insert here as applicable: increments for FMLA leave must be no greater than the smallest increment used for any other type of leave and no greater than one hour*].

Employees who require intermittent leave or reduced leave schedule are encouraged to arrange medical treatments and appointments to minimize work disruption.

An employee requesting non-continuous leave that is foreseeable may be required to transfer temporarily to an available alternative position offered by [*COMPANY*] for which the employee is qualified and which better accommodates recurring periods of leave than the regular employment position of the employee. The employee will be entitled to equivalent pay and benefits, but will not necessarily be assigned the same duties in the alternative position.

#### Returning From Leave

If leave is taken because of an employee’s own serious health condition (except when employee is taking intermittent leave), employees are required to provide medical certification that they are fit to resume work. [*Insert as applicable if you have a specific form used: Fitness for Duty Certification Forms may be obtained from the [insert here]*.] Employees failing to provide the release from their healthcare provider will not be permitted to resume work until it is provided and may no longer be entitled to reinstatement.

Certain rules apply when an employee is released to return to work (with or without restrictions):

1. The employee must provide a release to return to work (with or without restrictions) from the health care provider.
2. If the employee is released to work with no restrictions, the employee will be returned to the same position held prior to the FMLA leave, or one that is equivalent in pay, benefits and other terms or conditions of employment.
3. If the employee is released to work with restrictions, [*COMPANY*] will review the employee’s situation on an individualized basis to determine if reasonable accommodation of the restrictions can be made. If the employee is released to return to work with restrictions, but has not yet exhausted his/her 12 weeks of FMLA entitlement, the employee may choose to accept whatever job may be offered to meet his/her restrictions or continue on FMLA leave instead.
4. Employees who fail to return to work on the scheduled end date of their approved leave of absence or make a timely request for an extension prior to that date will be considered to have abandoned the job and their employment may be terminated without further notice.
5. If an employee is not released to work at the conclusion of his/her FMLA leave entitlement, he/she may request an extension of leave. There is no guarantee of availability or approval of such leave, but upon request, the Company will engage in an interactive dialogue with the employee and will make an individual determination of what is reasonable based on the specific circumstances of the employee.

#### Concurrent Leaves of Absence

To the extent that an employee is entitled to take FMLA leave pursuant to this policy, and under the same circumstances is also entitled to take one or more kinds of leave pursuant to other Company policies or practices, both the FMLA and otherwise available leaves will be deemed to be taken concurrently.

#### State and Local Family and Medical Leave Laws

Where State or local family and medical leave laws offer more protections or benefits to employees, the protections or benefits provided by such laws will apply.

#### No Work While on Leave *[include only if this is your policy for outside employment otherwise]*

While on approved leave, it is expected that employees only engage in those activities that are consistent with the reason for the leave. The taking of another job while on an approved leave of absence is grounds for immediate termination, to the extent permitted by law.

#### Exemption for Key Employees

[*COMPANY*] may choose not to return highly compensated employees (highest paid 10% of employees at a worksite or within 75 miles of that worksite) to their former or equivalent positions following a leave if restoration of employment will cause substantial economic injury to [*COMPANY*]. (This fact-specific determination will be made by [*COMPANY*] on a case-by-case basis.) [*COMPANY*] will notify employees if they qualify as a "highly compensated" employee, if [*COMPANY*] intends to deny reinstatement, and of his/her rights in such instances.

#### Recordkeeping

Records and documents relating to certifications, recertifications or medical histories of employees or employees’ family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the personnel files.