



Family Medical Leave Act (FMLA) POLICY

Lewis County Employee Handbook Part Two

Effective Date: April 28, 2014 Supersedes: February, 2002

A. Purpose

Lewis County endeavors to provide a work environment that affirms employees in their roles as part of the organization, as family members, and as individuals. Lewis County recognizes that certain life events, such as personal injury, disability or illnesses, a family member's illness or injury and the birth or adoption of a child are particularly significant and may require time off from work. For this reason, we strive to reasonably accommodate the needs of employees for periods away from work and have adopted human resources policies and benefits that support employees and their families.

B. Policy

It is the policy of Lewis County to authorize leaves of absence to employees, by employee requestor or employer enrollment for qualifying medical circumstances, as specified in the Family and Medical Leave Act (FMLA), and other relevant statutes and regulations. Administration of such leaves shall be conducted in accordance with the applicable laws and regulations. Employees covered by a collective bargaining agreement will receive their FMLA leaves according to the terms of their union contracts wherever their contracts differ from this policy.

C. Eligibility for Leave

Employees who have been employed 12 months and who have worked at least 1,250 hours during the 12-month period immediately preceding the start date of the leave are eligible for leave. Time that is paid for but not worked, like sick leave, vacation or holidays, is not counted toward the 1,250 hours.

NOTE: Employees who do not meet the FMLA eligibility requirements may nevertheless be granted an Employee Medical Leave due to personal illness, injury or disability as a reasonable accommodation or as required by state law. Such employees should contact the Lewis County Human Resources Department for assistance. Such leave may be granted on different terms and conditions than FMLA leave. Generally, employees ineligible for FMLA leave will need to continue insurance, covering the full premium, at their own cost, and the duration of the leave as well as reinstatement rights will be determined under principles of reasonable accommodation and Lewis County Policy.

D. Type of FMLA Leaves

NOTE: The actual length of an employee's FMLA entitlement during an Employee Medical Leave or Family Medical leave may be shorter than 12 work weeks due to other types of FMLA leave used during the 12-month period.

1. Employee Medical Leave. An approved absence given to eligible employees for up to 12 work weeks of leave (combined paid and unpaid) in a rolling 12-month period due to an employee's serious health condition that renders the employee unable to perform the functions of his or her position. Employees on an FMLA leave due to their own serious health condition will be required to use their accrued vacation, holiday, compensatory time, or personal leave to the extent available during the leave. Employees on FMLA leave are also required to use their accrued sick leave to the extent available during such leave, but have the option to retain up to 40 hours of their accrued sick leave. If paid time is unavailable or exhausted, the leave is unpaid. The employee shall not accrue additional sick or vacation time during unpaid FMLA leave. Employee medical leaves may be extended beyond the FMLA entitlement period.
2. Family Medical Leave. An approved absence given to eligible employees for up to 12 work weeks of leave (combined paid and unpaid) in a rolling 12-month period due the employee's need to care for a child, spouse or parent with a serious health condition. Family medical leave may be taken when the employee is needed to care for a child, spouse, or parent who has a serious health condition. Employees on a FMLA leave due to a child's, spouse's, or parent's serious health condition will be required to use their accrued vacation, holiday, compensatory time, or personal leave to the extent available during the leave. Employees on Family Medical leave are also required to use their accrued sick leave to the extent available during such leave, but have the option to retain up to 40 hours of their accrued sick leave. If paid time is unavailable or exhausted, the leave is unpaid. The employee shall not accrue additional sick or vacation time during unpaid FMLA leave.

3. **Parental Leave.** An approved absence available to eligible employees for up to 12 work weeks of leave (combined paid and unpaid) in rolling 12-month period due the employee's need to care for a newborn child or a newly-adopted child or a newly-placed foster child. Employees on a Parental Leave will be required to use their accrued vacation, holiday, compensatory time, and personal leave to the extent available during such leave. Employees on Parental leave are also required to use their accrued sick leave to the extent available during such leave, but have the option to retain up to 40 hours of their accrued sick leave. If paid time is unavailable or exhausted, the leave is unpaid. The employee shall not accrue additional sick or vacation time during unpaid FMLA leave.

NOTE: Parental Leave falls under the FMLA, FLA, and Pregnancy Disability Leave guidelines.

E. Definitions

All terms used in this policy will be defined by the regulations implementing the FMLA. The following definitions are specifically included for your convenience and are not all inclusive and may not reflect the most current changes in FMLA.

1. **Child.** A biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in *loco parentis*; includes a child 18 years of age or older who is incapable of self-care because of a mental or physical disability.
2. **Continuing Treatment.** Includes: (a) treatment two or more times by or under the supervision of a health care provider or one treatment by a healthcare provider with a continuing regimen of treatment (e.g., prescription medication, physical therapy); (b) any period of incapacity related to pregnancy or for prenatal care; (c) any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requiring at least 2 (two) visits a year to a health care provider; (d) a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, only needs the supervision of a health care provider; or (e) multiple treatments for restorative surgery or a condition that would likely result in a period of incapacity of more than 3 (three) days if not treated. As defined in the Medical Leave Act, 29 C.F.R. 825.115.
3. **Group Health Plan.** Any plan of, or contributed to by, Lewis County to provide health care, including medical care, surgical care, hospital care, dental care, eye care, mental health counseling and substance abuse treatment.
4. **Health Care Provider.** A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; podiatrists, dentists, clinical psychologist, optometrists and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist); nurse

practitioners and nurse midwives performing within the scope of their practice as allowed by state law; Christian Science practitioners; or any other health care provider from whom the employer's group health plan will accept certification for benefits claims. As defined in the Medical Leave Act, 29 C.F.R. 825.125.

5. **Rolling 12-Month Period.** For all types of FMLA leave, the rolling 12-month period is measured backward from the date the employee requests to use any FMLA eligible leave (either paid or unpaid). Thus, each time an employee uses any FMLA eligible leave, the remaining leave entitlement would be the balance of the 12 work weeks which has not been used during the immediately preceding 12 months.

For example, upon the first occasion of an employee taking FMLA leave, the date of the initial leave shall be used to calculate future eligibility for the maximum twelve (12) weeks in any twelve month period. The County shall inform the employee that the leave shall be counted toward the employee's FMLA entitlement.

6. **Serious Health Condition.** Lewis County intends to rely on the FMLA's regulations for deciding whether an employee's condition is a serious health condition. Each case will be evaluated individually in compliance with the FMLA. A serious health condition is an illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, hospice or residential care facility or continuing treatment by a health care provider; as the aforementioned qualities are defined in the Family and Medical Leave Act, 29 C.F.R. 825.113.
7. **Spouse.** A husband or wife as defined or recognized under applicable federal law.
8. **Parent.** An employee's biological, adopted or foster parent. A person standing in *loco parentis* to the employee. It does not include an employee's mother-in-law or father-in-law.

F. Procedures

1. **Written Notice of Leave.** Any staff member wishing to take a leave of absence (FMLA or otherwise) should give written notice to the employee's Department Director/Elected Official and comply with the notice and certification requirements detailed in this policy and applicable regulations.
2. **Employee Medical and Family Medical Leaves.**
 - a. Lewis County may require medical certification to support a request for leave for an employee to care for the employee's own serious health condition or a seriously ill child, spouse or parent. For an Employee Medical Leave, the certification must include a statement that the employee is unable to perform the essential functions of his or her position. For Family Medical Leaves, the certification must include a statement that the employee is needed to care for a family member. In either case, the certification must include an estimate of the duration of leave.

b. Lewis County may require, at its discretion and expense, a second medical opinion. If the first and second opinions differ, Lewis County may require, at its expense, the binding opinion of a third health care provider, who will be chosen jointly by Lewis County and the employee. Lewis County may also require at its discretion periodic recertification, as per 29 C.F.R. 825.307.

- In the event that a third health care provider is necessary to certify on FMLA leave, the provider shall be chosen as follows:
- The Employee shall offer the name of a third provider. If the Employer refuses to accept this provider, the Employer shall propose a provider. If the Employee refuses to accept the provider, each side shall prepare a list of three (3) providers. These six (6) names shall be placed in a box and a name selected in the view of both parties. All communications with the third provider shall be by means of a joint letter from the Employee and the Employer. The fee for the third provider shall be paid by the County. The opinion of the third provider shall be final and binding.

c. If certified as medically necessary due to the serious health condition of the employee or the employee's spouse, child, or parent, leave may be taken on an intermittent or reduced leave schedule. Absences on an intermittent or reduced schedule basis will only be counted against the 12 work-week entitlement for such time actually absent from work. If leave is requested on this basis, however, Lewis County may require the employee to temporarily transfer to an alternative position for recurring periods of absence or part-time schedule, provided that the position has equivalent pay and benefits.

3. Parental Leave: Employees requesting a Parental Leave may be required to provide reasonable documentation of family relationships. If Lewis County consents, Parental Leave may be taken on an intermittent or reduced leave schedule. Absences on an intermittent or reduced schedule basis will only be counted against the 12 work-week entitlement for such time actually absent from work.

4. Military Family Leave Provision (FMLA)

The Military leave provision has the same time worked requirements as medical FMLA. Military leave may require the certification of Military Orders and completion of WH-384.

Military Caregiver Leave: A spouse, son, daughter, parent, or next of kin may take up to twenty-six (26) workweeks of leave to care for 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. If employee and spouse both work for the County, they will together be entitled to a total of twelve weeks or 26 weeks for military care leave under this section.

Qualifying Exigency Leave: Up to twelve (12) weeks, may be taken for any qualifying exigency arising out of the fact that a covered military member is on active duty or call to active duty status for a Contingency Operation. The FMLA leave is to address the most

common issues that arise when a covered military member is deployed, such as attending military-sponsored functions, making appropriate financial and legal arrangements, and arranging for alternative childcare.

5. Notification and Reporting Requirements. When the need for leave is foreseeable, the employee must provide a minimum of 30 days' written advance notice, make efforts to schedule the leave so as not to disrupt operations, and provide any required medical certification before the leave begins. If the need for the leave, or its approximate timing, is not foreseeable, an employee must provide notice as soon as practicable. The employee may be required to report periodically on his or her continuing need for a leave and intention to return to work. Employees whose leave has been necessary because of their own serious health condition may be required to provide a fitness-for-duty report as a condition of their return to work.
6. If both spouses are employed by the County, they shall each be entitled to a total of twelve (12) work weeks of family leave during any twelve (12) month period for birth or placement of a child or to care for a seriously ill parent.
7. Confidentiality. Medical information provided to Lewis County to comply with medical certification and fitness-for-duty certification requirements will be held in the employee's confidential medical file and shall not be the basis for any personnel action or decisions other than those related to the medical leave of absence.

G. Status of Insurance Benefits During Leave

1. An employee on an approved FMLA leave will continue to be covered under Lewis County group health plans as well as other insurance plans as described by policy or collective bargaining agreement on the same conditions as coverage would have been provided if the employee had been continuously employed during the FMLA entitlement period.
2. An employee on an approved FMLA leave may continue any of his or her other non-county provided group insurance coverage at his or her own cost during any unpaid portion of the FMLA leave. Employees who choose not to continue such coverage during the unpaid portion of the FMLA leave will be entitled to reinstatement of the group insurance on the same terms prior to taking the leave without any qualifying period, physical examination or exclusion of pre-existing conditions.
3. Health plan or other group coverage may be terminated for any employee on an FMLA leave if payment of the employee's premium contribution is more than 30 days late. Lewis County may elect to continue group coverage in such an event and may recover the employee's share of premiums. Alternatively the employee may be given his/her COBRA notice. An employee who loses coverage because of lapsed premium payments is entitled to restoration of coverage and benefits upon his or her return from an FMLA leave and will not suffer any loss of standing in benefits coverage.

During the FMLA leave period, the County shall pay its portion of health care, Life/Health and Accident insurance premiums and have the authority to obtain reimbursements from employees who choose not to return to work at the end of the FMLA leave.

If an employee does not return to work and the County can pursue reimbursement, the hiring authority will notify the employee in writing of the amount of health plan premiums paid on their behalf;

The employee will be given thirty (30) days to make arrangements for premium reimbursement;

If the employee fails to make full payment or arrangements within thirty (30) days, the unpaid balance will be turned over to the Treasurer's Office for collection.

H. Reinstatement From Leave

1. An employee returning from an FMLA leave before or at the conclusion of the FMLA entitlement period is entitled to be returned to the same position that the employee held when leave commenced. Assignment to an equivalent position will only be permitted if the original position no longer exists or if the employee is physically incapable of performing the duties of the original position. An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. Thus, if an employee's job is eliminated while the employee is on leave or the employee would have been laid off even if the employee had not been on leave, the employee may be laid off while on leave.
If the employer's circumstances have so changed that the employee cannot be reinstated to the same position, or a position of equivalent pay and benefits, the employee shall be reinstated in any other position which is vacant and for which the employee is qualified. Employees who are on Family Medical Leave for their own serious medical condition shall, upon their return to work, provide a "return to work" authorization from their medical provider.
2. Lewis County will make a reasonable effort to restore employees from FMLA leaves; however, we reserve the right to deny reinstatement to employees who fail to provide a required fitness-for-duty certificate.
3. Extensions. Employees who have exhausted their FMLA entitlement and who need additional leave may request a personal leave of absence. Personal leaves may be granted on different terms and conditions than FMLA leaves.
4. The taking of leave under this section shall not result in the loss of any benefit, including seniority or pension rights, accrued before the date on which the leave commenced.
5. Nothing in this section shall be construed to require the employer to grant benefits, including seniority or pension rights, during any period of leave.

6. All policies applied during the period of leave to the classification of employees to which the employee on leave belongs shall apply to the employee on leave.
7. Employees must use annual, sick leave, or other paid time, during any period covered by the Family Medical Leave Act. Employees also have the option to retain up to 40 hours of their accrued sick leave if they choose.

I. Scope of Policy

1. This Resolution shall be the controlling authority for FMLA policy within Lewis County and all County Employee Handbooks, whether countywide, independent elected officials, or departmental, shall conform to this Resolution. Where a specific issue regarding FMLA leave is not addressed by resolution, personnel policies, or by collective bargaining agreements, the definitions in Federal Law (29 CFR) shall prevail.
2. The County shall use FMLA forms in accordance with 29 C.F.R.