



# FAMILY AND MEDICAL LEAVE ACT POLICY

**Effective Date: August 2, 1993**

<b>Owner</b>	Human Resources
<b>Reviewer(s)</b>	Human Resources
<b>Approver(s)</b>	County Manager
<b>Applicable Policies</b>	Leave Policy, Paid Family Leave Policy
<b>Applicable Documents</b>	FMLA Instructions (Supervisors, Employees) Knowledge Articles
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## 1. PURPOSE

Durham County provides unpaid, job protected leave to eligible employees in compliance with the Family and Medical Leave Act (FMLA) of 1993 and subsequent amendments.

## 2. POLICY

This policy establishes FMLA leave eligibility, the types of leave that can be designated as FMLA leave, and the process for requesting this leave.

## 3. APPLICABILITY

All County employees covered by the Personnel Ordinance, and all those pursuant to a Memorandum of Understanding.

Employees who have worked for the County for at least 12 months within a 7-year consecutive period and who have worked a total of 1,250 hours in the 12 months immediately preceding the start of FMLA leave.

## 4. DEFINITIONS

**Active Duty** - In order for the employee to take qualifying exigency leave, the military member must be on covered active duty, under a call to covered active-duty status, or have been notified of an impending call or order to covered active duty. For members of the **Regular** Armed Forces covered active duty is duty during the deployment of the member with the Armed Forces to a foreign country. For members of the Reserve components of the Armed Forces (members of the U.S. National Guard and Reserves), covered active duty is duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in support of a contingency operation. Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any



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territory or possession of the United States. It also includes deployment to international waters.

Child - Son or daughter means a biological, adopted, foster child, stepchild, legal ward, or a child of a person standing *in loco parentis*, who is under 18 years of age or who is 18 years of age or older and incapable of self-care because of a mental or physical disability at the time that FMLA leave is to commence. The onset of a disability may occur at any age for purposes of the definition of an adult "son or daughter" under the FMLA.

**Note:** The definition of son or daughter for purposes of FMLA military family leave is different.

Child 18 Years of Age or Older - A child who is 18 years of age or older if the adult child is incapable of self-care because they have a disability as defined by the Americans with Disabilities Act (ADA) at the time the leave is to commence, and they are incapable of self-care because of the disability and have a serious health condition for which they need care.

Durham County Additional Family and Medical Leave - Fourteen weeks of leave beginning when FMLA leave exhausts that is approvable by the Department Director when an employee requires additional recuperation time before they can perform the essential duties of their position. This leave is available only if the employee's physician can provide a return-to-work date.

Family Members for Whom an Employee May Take Military Caregiver Leave - To take military caregiver leave, the eligible employee must be the spouse, parent, son or daughter, or next of kin of the covered service member. For purposes of military caregiver leave, a son or daughter refers to the service member's son or daughter of any age. The next of kin is the service member's nearest blood relative, other than the service member's spouse, parent, son, or daughter in an order designated by the Act.

Family Members for Whom an Employee May Take Qualifying Exigency Leave - To take qualifying exigency leave, the military member must be the employee's spouse, parent, or son or daughter. Unlike non-military FMLA leave, for purposes of qualifying exigency leave, an employee's son or daughter on covered active duty refers to a son or daughter of any age.

In Loco Parentis - An individual stands *In Loco Parentis* to a child if he or she has day-to-day responsibilities to care for or financially support the child. The person standing *in loco parentis* is not required to have a biological or legal relationship with the child. Although no legal or biological relationship is necessary, grandparents or other relatives, such as siblings, may stand *in loco parentis* to a child under the FMLA where all other requirements are met. The *in loco parentis* relationship exists when an individual intends to take on the role of a parent.



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Similarly, an individual may have stood *in loco parentis* to an employee when the employee was a child even if the individual has no legal or biological relationship to the employee.

Caring for a child on the basis of an *in loco parentis* relationship.

- The fact that a child has a biological parent(s) in the home does not prevent an employee from standing *in loco parentis* to a child.
- The FMLA does not restrict the number of parents a child may have.

Caring for an adult who stood *in loco parentis*.

- An eligible employee is entitled to leave to care for a person who stood *in loco parentis* to the employee when an employee was a child.
- The fact the employee has biological, adoptive, step, or foster parent(s) does not preclude a determination that another individual stood *in loco parentis*.

Intermittent Leave - Leave taken in separate blocks of time due to a single qualifying reason that involves alternating periods of absence from and presence at work.

Key Employee - A salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite.

Next of Kin - Relationships covered only for Military Caregiver Leave, to include the nearest blood relative other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered 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.

Parent - 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."

Reduced Schedule - A leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.

Serious Injury or Illness - An injury or illness that was incurred by the covered service member in the line of duty on active duty in the Armed Forces or that 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.

Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider. Chronic conditions and long-term or permanent periods of incapacity may also



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meet the requirements, as would certain conditions requiring multiple treatments.

A common qualifying reason for FMLA leave is continuing treatment by a health care provider for a period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

- Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity: or,
- At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity which results in a regimen of continuing treatment under the supervision of the health care provider.

Spouse - Spouse means a husband or wife as defined or recognized in the state where the individual was married, including in a common law marriage 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.

Twelve Month Year - A rolling 12-month period measured backward from the date an employee uses FMLA leave (each time an employee takes FMLA leave, the remaining leave is the balance of the 12 weeks not used during the immediately preceding 12 months).

## 5. GENERAL GUIDELINES

### A. Requesting FMLA Leave

- Employees must provide notice of the need for FMLA leave to their supervisor, to the Human Resources Department, and to the County's external FMLA administrator.
- The employee is not required to specifically mention the FMLA. However, the employee is required to provide enough information for the employer to know that the leave may be covered by the FMLA.
- For foreseeable leave, the employee must also indicate when and how much leave is needed.
  - Generally, an employee must give at least 30 days' advance notice of the need to take FMLA leave when they know about the need for the leave in advance and it is possible and practical to do so.



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- If the employee is incapacitated, the supervisor may provide notice of the need for FMLA leave to the Human Resources Department and to the County's external FMLA administrator.
- The County requires that a medical certification must be provided to the County's external FMLA administrator by a medical provider within fifteen days of the leave request to support the request for FMLA leave.
- Requests for an extension of FMLA leave must be made to the employee's supervisor, the Human Resources Department, and to the County's external FMLA administrator.
  - An updated medical certification must be provided by a medical provider within fifteen days of the leave extension request to support the request for the extension.

## B. Return from FMLA Leave

- Employees must notify their supervisor 2 business days in advance of their established return to work date.
  - On the date of return from FMLA leave due to their own serious health condition, employees are also required to provide their supervisor and Human Resources with a Return-to-Work certification from their health care provider.
  - Return to Work certification may also be requested for an intermittent leave if reasonable safety concerns exist.
  - An employee who fails to provide a Return-to-Work certification will be prohibited from returning to work until the certification is provided.
- The certification should not give specific medical information but only inform the supervisor of the impact on job performance to allow the supervisor to evaluate and determine the appropriate course of action.
- The supervisor must keep this information confidential.
- On the date of return from FMLA leave due to caring for next of kin, supervisors are required to notify the Human Resources' Benefits Division of the employee's return.
- Separation will occur on the basis of unavailability of accrued leave if an employee fails to return to work after their FMLA leave expires, requests for additional leave have been denied and all appropriate leave balances are depleted.
- If the employee gives unequivocal notice of intent not to return, obligations under the Family and Medical Leave Act cease immediately.



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- The hours-of-service requirement must be met before an employee is eligible for FMLA leave after exhausting 12 weeks of FMLA leave previously.
- The employee must work a total of 1,250 hours of service in the 12 months immediately preceding the start of any requested FMLA leave.

## C. Intermittent and Reduced Schedule Leave

- Leave related to the serious health condition of an employee or an employee's family member may be taken intermittently or as a reduced schedule.
- Intermittent leave is taken in separate blocks of time due to a single health condition.
- Intermittent leaves and reduced schedules are not allowed for the purpose of bonding after the birth of a child, placement of a foster child, or adoption of a child.
- If leave is unpaid, the County will reduce the employee's salary based on the amount of time actually worked.
- In addition, while an employee is on an intermittent or reduced schedule leave, the County may temporarily transfer the employee to an available alternative position that better accommodates the recurring leave.
- Employees on either intermittent leave or a reduced schedule must return to a regular work schedule at the end of the approved leave request.

## D. Pay Benefits and Protection during FMLA Leave

- The County requires the concurrent use of appropriate accrued paid leave while the employee is on FMLA leave.
- The employee is required to exhaust any appropriate accrued paid leave (e.g. sick leave, compensatory time, management leave, or annual leave) as part or all of the FMLA leave time requested.
- The County will not provide paid sick leave in any situation in which it would not normally provide any such paid leave (e.g. allowing an employee to use sick leave concurrently during the last six weeks of approved FMLA leave for the uncomplicated birth of a healthy baby that is considered "bonding" time).
- During approved FMLA leave, the County will continue to pay its portion of the premiums for the employee's benefits package.
- For employees using appropriate paid leave, the County will deduct the employee's portion of insurance premiums as a regular payroll deduction.



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- Employees in leave without pay status are responsible for timely payment of their portion of the premiums.
- Failure to make timely payment of your portion of the premiums will result in termination of those benefits, with the exception of "employee only" health insurance.

## Benefits Disposition While on FMLA Leave

FMLA Leave Type	While in Paid Leave Status	While in Leave Without Pay Status
Medical Leave for Employee's Own Medical Condition	County continues to pay for County benefits "package"	County continues to pay for County benefits "package"
Family Leave, and Military Exigency and Caregiver Leave	County continues to pay for County benefits "package"	County continues to pay for County benefits "package"

- Leave and seniority will not accrue while an employee is on FMLA leave, except when the employee is in pay status.
- While an employee is on leave without pay, all contributions to the Local Governmental Employees' Retirement System and the County's supplemental retirement plan cease.
- Upon return from leave, the employee will be returned to the same or equivalent position with the same benefits, pay, and other terms and conditions of employment.
- An equivalent position must be approved by the Director of Human Resources.
- The County has the right under FMLA to deny job restoration to certain "key employees" under certain circumstances, if necessary to prevent substantial and grievous economic injury to the County.
- The County will notify the employee of his or her status as a key employee at the time of the request's approval and will provide all other information required by law if the County denies job restoration.

### E. Performing County Work While on Continuous FMLA Leave

- Exempt and non-exempt employees on continuous FMLA Leave for their own serious medical condition or to care for next of kin are not to perform any work for



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- the County while on continuous leave, including work that can be performed at home via computer remote access.
- The County's FMLA obligations of job protection and benefits coverage cease with evidence of County work being completed while on continuous leave.
- Supervisors must notify Information Technology to disable remote access upon an employee's absence, and enable access when employee returns, and the Benefits Division must also be advised.
- Supervisors must also collect the County-issued electronic devices.

## F. Prohibition on Secondary Employment

- Exempt and non-exempt employees on FMLA leave for their own serious health condition cannot have secondary employment if the secondary employment has job requirements similar to their County employment, or if the secondary employment has the same work schedule as their County employment.

## G. Additional County Family or Medical Leave

- The County's federally mandated obligations cease once an employee has exhausted 12 weeks of FMLA leave. The County may grant up to 14 weeks of Additional County Family or Medical Leave for leave related to
- the serious health condition of an employee or an employee's spouse, child or parent, with the department head's approval.
- The Department Head must consult with Human Resources prior to approval.
- The same provisions outlined above will apply except:
  - In cases where both spouses are employed by Durham County, the two spouses together may take a combined total of up to 14 weeks.

### Benefits Disposition While on Durham County Additional Leave (DCL)

DCL Leave Type	While in Paid Leave Status	While in Leave Without Pay Status
Medical Leave for Employee's Own Medical Condition	County continues to pay for County benefits "package"	County pays premium for the lowest cost, employee-only health insurance ONLY
Family Leave, and Military Exigency and Caregiver Leave	County continues to pay for County benefits "package"	Employee pays ALL their benefit costs





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## H. Requesting Additional County Family or Medical Leave

- Employees who are not able to return from FMLA leave may request up to 14 weeks of Additional County Family or Medical Leave of their supervisor, the Human Resources Department, and the County's external FMLA administrator if additional
- leave is needed before they can return to work after taking the original FMLA leave.
- The employee must indicate when and how much leave is needed.
- A medical certification must be provided to the County's external FMLA administrator by a medical provider within fifteen days of the leave request to support the request for Additional County Family or Medical Leave.
- An updated medical certification must be provided by a medical provider within fifteen days of the Additional County Family or Medical Leave request to support the request.
- The Human Resources Department will seek the Department Director's approval/denial decision after confirming that the updated medical certification supports the leave request.

## I. Return from Additional County Family or Medical Leave

- Employees must notify their supervisor 2 business days in advance of their established return to work date.
- On the date of return from Additional County Family or Medical Leave due to their own serious health condition, employees are also required to provide their supervisor and Human Resources with a Fitness for Duty certification from their health care provider. Fitness for Duty certification may also be requested for an intermittent leave if reasonable safety concerns exist.
- An employee who fails to provide a Fitness for Duty certification will be prohibited from returning to work until the certification is provided.
- The certification should not give specific medical information but only inform the supervisor of the impact on job performance to allow the supervisor to evaluate and determine the appropriate course of action.
- The supervisor must keep this information confidential.
- On the date of return from Additional County Family or Medical Leave due to caring for next of kin, supervisors are required to notify the Human Resources' Benefits Division of the employee's return.



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- Separation will occur on the basis of unavailability of accrued leave if an employee fails to return to work after their Additional County Family or Medical Leave expires, requests for additional leave have been denied and all appropriate leave balances are depleted.
- If the employee gives unequivocal notice of intent not to return, the Additional County Family or Medical Leave will end immediately.

## 6. RESPONSIBILITY

- It is the responsibility of Durham County supervisors and managers to administer, communicate, and ensure compliance
- It is the employee's responsibility to comply with policy guidelines.
- It is the responsibility of the Human Resources Department to interpret, monitor, and update the policy content.
- Any violation or policy misuse will result in disciplinary action up to and including dismissal.

## REVISION HISTORY

Version ID	Revision Date	Author	Reason for Revision
v.1.0-1993	08-02-1993	Human Resources	Adopted
v.2.0-2014	01-20-2014	Human Resources	Reformat, added wording
v.2.0-2016	10-01-2016	Human Resources	Reformat, added wording
v.3.0-2025	07-01-2025	Human Resources	Reformat, add wording



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## APPENDIX

### FMLA LEAVE CHART

Leave Type	Circumstances
<b>Basic FMLA</b>	<p>Employees may take up to 12 weeks of unpaid leave in a 12-month period for:</p> <ul style="list-style-type: none"> <li>• Caring for a newborn, adopted, or foster child (within 1 year of placement)</li> <li>• Caring for a spouse, child, or parent with a serious health condition</li> <li>• Employee's own serious health condition, including pregnancy, prenatal care, or childbirth</li> </ul> <p>Note: If both spouses work for the County, combined leave is limited to 12 weeks for the same family member</p>
<b>Military Exigency</b>	<p>Employees are entitled to use up to 12 weeks of their Basic FMLA Leave entitlement to address certain qualifying exigencies. Leave may be used if the employee's spouse, son, daughter, parent or the employee is on covered active duty or called to covered active-duty status (or has been notified of an impending call or order to covered active duty) as a member of the regular Armed Forces, the National Guard, or Reserves. Qualifying exigencies may include:</p> <ul style="list-style-type: none"> <li>• Short-notice deployment (up to 7 days)</li> <li>• Military events or briefings</li> <li>• Alternative childcare arrangements</li> <li>• Parental care for a service member's parent</li> <li>• Financial/legal arrangements</li> <li>• Rest and recuperation (up to 15 days)</li> <li>• Counseling and post-deployment briefings</li> <li>• Other mutually agreed activities</li> </ul> <p>When both husband and wife work for the County, the aggregate amount of leave that can be taken by the husband and wife to care for a covered service member is 26 weeks in a single 12-month period.</p>

<b>Military Caregiver Leave</b>	<p>Employees may take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A covered service member must be a current member of the regular Armed Forces, or a member of the National Guard or Reserves, who:</p>
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- have a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or
- have a serious illness or injury that existed before the service member went into active duty that was subsequently aggravated in the line of duty; or
- is in outpatient status; or
- is on the temporary disability retired list; or
- have a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or
- have a serious illness or injury that existed before the service member went into active duty that was subsequently aggravated in the line of duty; or
- is in outpatient status; or
- is on the temporary disability retired list; or

When both husband and wife work for the County, the aggregate amount of leave that can be taken by the husband and wife to care for a covered service member is 26 weeks in a single 12-month period.