

Missoula County Human Resources Policy- 2018

406.00 FAMILY AND MEDICAL LEAVE – MILITARY FAMILY LEAVE

406.10 POLICY AND REINSTATEMENT

Missoula County will provide all eligible employees the benefits required under the Federal Family and Medical Leave Act of 1993 (FMLA); and by the Military Family Leave Entitlements amendments to that Act authorized in 2008. County policy may expand upon some aspects of the benefits provided by these acts. Interpretation of issues related to FMLA leave will be made by the Human Resources Department in accordance with rules issued by the United States Department of Labor.

An employee returning to work following a FMLA leave will be returned to the same or equivalent position with equivalent pay, benefits and other conditions of employment as when the leave began. The use of FMLA leave cannot result in the loss of any employment benefit accrued prior to the start of an employee's leave.

406.20 ELIGIBILITY

To be eligible for FMLA leave, the employee must have worked for Missoula County for a minimum of 12 months, and for at least 1,040 hours during the 12 month period immediately preceding the requested leave. All paid hours (including overtime) shall be included in the calculation of the 1040 hours qualifying period.

406.30 BASIC FMLA LEAVE

An eligible employee will be granted up to 12 weeks of FMLA covered leave for any of the following reasons:

- The birth of a son or daughter or placement of a son or daughter with the employee for adoption or foster care, and to bond with the newborn or newly-placed child;
- To care for a spouse, son, daughter, or parent who has a serious health condition, including incapacity due to pregnancy and for prenatal medical care;
- For a serious health condition that makes the employee unable to perform the essential functions of his or her job, including incapacity due to pregnancy and for prenatal medical care; or
- For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

406.40 MILITARY FAMILY LEAVE – QUALIFYING EXIGENCY:

An eligible employee will be granted up to 12 weeks of FMLA covered leave in any twelve-month period for a qualifying exigency arising from the covered active duty status or call to covered active duty or from notification of an impending call or order to covered active duty of a spouse, domestic partner, son, daughter, or parent in the Regular Armed Forces, National Guard or Reserves.

“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. “Covered active duty” for members of the reserve components of the Armed Forces (members of the U.S. National Guard and Reserves) means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation as defined in section 101(a)(13)(B) of title 10, United States Code.

Qualifying exigencies may include: short notice deployment military events and related activities; childcare and school activities; financial and legal arrangements; counseling, rest and recuperation; post-deployment

activities; and additional activities or events that the employee and the employer agree are a qualifying exigency.

406.50 MILITARY CAREGIVER LEAVE

An eligible employee will be granted up to 26 weeks of FMLA leave in a "single twelve-month period" to provide care for a covered service member, who is:

- a spouse, domestic partner, son, daughter, parent or person designated as next of kin; and
- a current member of the armed forces, including a member of the National Guard or Reserves, and
- who has a serious injury or illness incurred in the line of duty while on active duty, that may render the service member medically unfit to perform his or her duties; and
- for which the service member is undergoing medical treatment, recuperation or therapy or is in outpatient status or is on the temporary disability retired list. Or
- A veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness if the veteran was a member of the Armed Forces at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

406.60 CALCULATING TIME

At the time an employee requests FMLA leave, or when the Employer has knowledge that an employee's leave may be for an FMLA qualifying event, payroll records for the previous 12 months will be reviewed to determine if FMLA leave has previously been used and the amount of leave an employee is eligible to receive. Eligible part-time employees will receive pro-rated leave based on the average weekly hours worked.

FMLA leave may be taken in a single block of time, or, if medically necessary, on an intermittent basis or on a reduced work schedule. When the leave is taken for childbirth or placement of a child for adoption or foster care, intermittent or reduced leave schedules are subject to employer approval. FMLA taken for the birth or placement of a child must be within one year (12 months) of the birth or placement.

In no event will an employee be eligible for more than 26 weeks of Family and Medical Leave for all qualified reasons. (29 CFR 825.127(3) For example, an eligible employee may during the "single 12-month period" take 16 weeks of FMLA leave to care for a covered service member and 10 weeks of FMLA leave to care for a newborn child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the "single 12-month period," even if the employee takes fewer than 14 weeks of FMLA leave to care for a covered service member.)

406.70 SERIOUS HEALTH CONDITION

A serious health condition means an illness, injury, impairment, or physical or mental condition that involves either:

- A. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (i.e., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connections with such inpatient care; OR
- B. Continuing treatment by a health care provider, which includes:
 - 1. A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
 - treatment two or more times by or under the supervision of a health care provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); OR

- one treatment by a health care provider (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); OR
2. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or
 3. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period, requires periodic visits (at least twice a year) to a health care provider; and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; OR
 4. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; OR
 5. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.
 6. For a current member of the Armed Forces, includes not only a serious injury or illness that was incurred by the member in line of duty on active duty but also a serious injury or illness that “existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces” that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.
 7. For a veteran, a serious injury or illness is defined as “a qualifying injury or illness that was incurred by the member in 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 line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.”

406.80 REQUEST FOR LEAVE, NOTICE AND CERTIFICATION

Requests for FMLA leave must be made in writing to the Department of Human Resources. Employees will be notified of their rights and responsibilities under FMLA when leave is requested or when the Employer has knowledge that an employee’s leave may be for an FMLA qualified event. Requests must be approved by both the employee’s supervisor and the Department of Human Resources. Once the employer is aware that the leave is being taken for a FMLA qualifying reason, the employer has the right to designate paid or unpaid leave as FMLA qualified. Designation of leave as qualified by FMLA is at the sole discretion of the employer.

Employees are required to provide notice of leave whenever possible. Thirty days’ notice is required when the need for leave is foreseeable. When advance notice is not possible, the employee must provide notice as soon as practical and must comply with the employer’s normal call-in procedures. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer’s operations.

Medical certification from a health care provider will be required to support a request for FMLA leave due to the employee's own serious health condition or that of a family member, except for leave requests for the birth of a child or placement of a child for adoption or foster care. Failure to provide the employer with a complete and sufficient certification may lead to FMLA leave being denied. Medical certification reflecting fitness for duty will be required when an employee returns to work from FMLA leave due to the employee's own serious health condition. Any communication with medical care providers regarding requests for medical certification or fitness for duty will be conducted by the Human Resources office.

406.90 USE OF PAID LEAVE

1. FMLA leave is unpaid leave except as modified by paragraph two of this section. Missoula County employees are required to use all available accrued paid sick leave prior to reporting FMLA leave,

except when FMLA leave is for a qualifying exigency under military family leave entitlements or if prohibited by Montana Workers Compensation law. Use of sick leave as required by this policy will not reduce the amount of FMLA leave for which an employee is eligible. An employee has the same protections provided by FMLA when using accrued sick leave as required by this policy for an FMLA qualified event.

2. An employee may request to use other accrued paid leave, or donated sick leave, during an FMLA qualified absence. Requests must be made in writing and approved by the employee's supervisor and Human Resources. Use of paid leave requested under this section, will be counted against the total FMLA leave available to that employee in that 12 month period. In any case where an absence that qualifies for FMLA leave is also covered by Missoula County's maternity or family leave policies, those leaves will run concurrently with FMLA leave.

406.91 INSURANCE BENEFITS

Employer provided insurance benefits will continue during an FMLA qualified absence and the employer will continue to pay premiums at the same level during FMLA leave as prior to the employee's use of FMLA leave. Employees who pay for dependent coverage for health or dental benefits, or who are purchasing supplemental insurance coverage including vision, life, disability, and long-term care are required to continue to pay those costs to maintain coverage during the FMLA leave. The employer's obligation to continue insurance benefits ends if the employee is more than 30 days late in payment of any required premiums provided the employer has given the employee written notice at least 15 days in advance advising that coverage will cease if payment is not received. Use of FMLA leave cannot result in the loss of any other employment benefit that accrued prior to the start of an employee's leave; however, an employee has no greater right to restoration of insurance benefits or to other benefits and conditions of employment than if the employee had been continuously employed.

If an employee fails to return to work following a FMLA leave, the employee may be liable for repayment of health benefits contributions paid by the county during the employee's unpaid FMLA leave. Repayment may be waived in situations where the continuing serious health condition or circumstances beyond the control of the employee prevents the employee from returning to work.