



**LAKE COUNTY**  
BOARD OF COUNTY COMMISSIONERS  
*County Procedure*

<b>Title:</b> Family Medical Leave Act (FMLA)	<b>Number:</b> ES-6.04.08
	<b>Approved:</b> October 27, 2010
	<b>Cancel:</b> ES-6.04.08 dated February 17, 2009
	<b>Originator:</b> Employee Services
	<b>Review:</b> October 27, 2015

**I. PURPOSE AND SCOPE**

The purpose of this document is to provide procedures for granting eligible employees up to twelve (12) workweeks (480 hours) of job protected leave during a 12-month period for any FMLA qualifying reason that is not related to military family leave.

**II. REFERENCES**

- A. The Family and Medical Leave Act of 1993 (FMLA) Code of Federal Regulations Title 29, Part 825
- B. Family Medical Leave Act (FMLA) Policy – LCC-84
- C. Military Family Leave Procedure # ES-6.04.11

**III. DEFINITIONS**

- A. Eligible employee: The term "eligible employee" means an employee who has been employed with the Lake County Board of County Commissioners (County) at least 12 months or fifty-two (52) weeks which need not be continuous and worked at least 1,250 hours during the previous 12-month period.
- B. Parent: The term "parent" means the biological parent of an employee or an individual who stood in place of a parent to an employee when the employee was a son or daughter.
- C. Son or daughter: The term "son" or "daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under eighteen (18) years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability.

- D. Key employee: A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees.
- E. Job protected leave: The term "job protected leave" means that upon an employee's return from FMLA leave, he/she will be reinstated to the same or an equivalent job with the same pay, benefits and terms and conditions of employment.

#### **IV. APPLICABILITY**

This procedure applies to all eligible employees of Lake County Board of County Commissioners (BCC).

#### **V. PROCEDURES**

##### A. General Administration

In accordance with the Family and Medical Leave Act of 1993 (FMLA), it is the policy of Lake County BCC to grant up to 12 workweeks (480 hours) of family and medical leave during a 12-month period to eligible employees (see Section III for definition).

##### B. FMLA Qualifying Reasons

To qualify as FMLA leave under this policy, the eligible employee must be taking leave for one of the following reasons:

1. The birth of a son or daughter of the employee and in order to care for such son or daughter.
2. The placement of a son or daughter with the employee for adoption or foster care.
3. The serious health condition of the employee that makes him/her unable to perform the functions of his/her position (see Section C for explanation of Serious Health Condition).
  - a. Employees with questions regarding which conditions may be covered under FMLA are encouraged to consult with the Department of Employee Services (Employee Services).
  - b. The County will require an employee to provide a doctor's certification of the serious health condition (see section H for the Certification of Serious Health Condition process).
  - c. If an employee takes available leave for a health condition that progresses into a serious health condition and the employee requests FMLA leave, the County may retroactively designate as FMLA leave all or some portion of the earlier leave taken, to the extent that the earlier leave meets the necessary qualifications.

4. To care for a spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition (see Section C for definition).
5. To address “qualifying exigencies” (as defined by FMLA regulations) of a spouse, son, daughter, or parent who is on (or has been notified of an impending call to) covered active duty in the Armed Forces. The “Military Family Leave” Procedure # ES-6.04.11 outlines the procedures for requesting this type of leave.
6. To care for a covered servicemember of the Armed Forces (including a member of the National Guard or Reserves) who is a spouse, son, daughter, parent, or next of kin and 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 incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, rank, or rating. FMLA may also be used to care for 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 five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. The “Military Family Leave” Procedure # ES-6.04.11 outlines the procedures for requesting this type of leave.

#### C. Serious Health Condition

For purposes of FMLA, the “serious health condition” entitling an eligible employee to FMLA leave means an illness, injury, impairment, or physical/mental condition that involves:

1. Inpatient care (e.g., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (e.g., inability to work, attend school or perform other regular daily activities due to the serious health condition), or any subsequent treatment in connection with such inpatient care; or
2. Continuing treatment by a health care provider including any one or more of the following:
  - a. A period of incapacity of more than three (3) full consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - (1) In-person treatment at least once within seven (7) days of the first day of incapacity; and
    - (2a) A regimen of continuing treatment initiated by a health care provider during the first treatment; or

- (2b) A second in-person visit for treatment (the necessity of which is determined by the health care provider) within thirty (30) days of the first day of incapacity.
- b. Any period of incapacity due to pregnancy, or for prenatal care.
- c. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. Employee must be treated by the health care provider at least twice a year for that condition. A chronic serious health condition is one which:
  - (1) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
  - (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
  - (3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
- d. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- e. Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment.

#### D. Method of Calculating Leave

1. The County will measure the 12 months on a rolling 12-month period. The rolling 12-month period is measured backward from the date an employee intends to use any FMLA leave (e.g., if an employee has taken eight (8) weeks of leave during the past 12 months, an additional four (4) weeks of leave is still available to be taken). Note: The use of the rolling calendar will be effective April 20, 2009, in accordance with the FMLA requirement of providing employees with a 60-day notice of the conversion from a 12-month calendar year to a 12-month rolling calendar.
2. If a husband and wife both work for the County, and each wishes to take FMLA leave for the birth of a child, adoption or placement of a child in foster care, the husband and wife may only take a combined total of 12 weeks (480 hours) of FMLA leave.

3. Holidays occurring during a full week of FMLA leave count toward FMLA leave. If an employee works any part of a work week during which a holiday falls, the holiday does not count toward FMLA leave unless the employee was scheduled to work on the holiday.

Scenario A: An employee is on FMLA leave for an entire workweek which includes a holiday. The holiday would count toward FMLA leave.

Scenario B: An employee taking intermittent FMLA is on FMLA leave for a portion of a workweek in which there is a holiday. The holiday would not count toward FMLA leave, if the employee is not regularly scheduled to work holidays.

Scenario C: An employee is regularly scheduled to work 10 hours on Mondays even when there is a holiday. The employee takes FMLA leave on a Monday which is a holiday, therefore 10 hours scheduled to be worked on that day would be counted toward FMLA.

#### E. Intermittent Leave or a Reduced Work Schedule

Employees may take FMLA leave intermittently (e.g., leave of periods from an hour or more to several weeks as certified by a health care provider) or on a reduced work schedule for any of the following reasons:

- a. There is a documented medical need for the intermittent leave versus voluntary treatments and procedures. Employee's health care provider must state that such leave is medically necessary and explain why it is necessary.
- b. To provide care or psychological comfort to an immediate family member with a serious health condition.
- c. For the birth, adoption or foster care of a child, so long as the County and the employee mutually agree to the 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.

In most cases the leave may not exceed a total of 12 workweeks (480 hours) over a 12-month period, with the exception of military family leave.

#### F. Procedure for Requesting FMLA Leave

1. When an employee plans to take leave under this procedure, the employee must provide the County 30 days notice. If it is not possible to provide 30 days notice, the employee must give as much notice as is practicable when he/she learns of the need for leave.
2. If an employee fails to provide 30 days notice for foreseeable leave with no reasonable excuse for the delay, the County may require an explanation of why 30 days advance notice was not practicable. If timely notice is not given, the period of delay may count as a non-FMLA absence.

3. When requesting leave for the first time for a particular FMLA-qualifying reason, employees must provide sufficient information, depending on the situation (e.g., state a qualifying reason, explain the reason leave is needed, and/or provide anticipated timing and duration of leave if foreseeable), for the County to reasonably determine whether FMLA may apply (e.g., calling in “sick” is not enough).
4. When subsequently requesting leave for the same FMLA-qualifying reason for which leave has previously been provided, the employee must specifically reference the qualifying reason or state “FMLA” leave.
5. All Supervisors, Managers, and Directors are required to inform Employee Services if and when an employee provides initial notice that time off may be needed for an FMLA purpose. This requirement is in place to ensure that leave is administered and designated correctly and that the employee receives the appropriate paperwork in a timely manner.
6. When sufficient notice is provided that time off may be for an FMLA purpose, employees must consult with the County in advance to make a “reasonable effort” to schedule planned leave and treatment so as not to unduly disrupt County operations. Employees must advise the County as soon as practicable when their dates of leave change or become known.
7. Upon receiving notice that FMLA is needed, Employee Services will provide each employee requesting FMLA leave a packet that includes the following:
  - a. Employee Rights and Responsibilities Flyer (Attachment 1)
  - b. Notice of Eligibility and Rights and Responsibilities (Attachments 2)
  - c. Application for Family or Medical Leave (Attachment 3)
  - d1. Certification of Health Care Provider for Employee’s Serious Health Condition\* – *if applicable* (Attachment 4); or
  - d2. Certification of Health Care Provider for Family Member’s Serious Health Condition – *if applicable* (Attachment 5); and
  - e. FMLA Fitness for Duty Certification\* – *if applicable* (Attachment 7)
  - f. Copy of employee’s job description\* (if leave is for employee’s own serious health condition)

*\*The employee's job description should accompany the "Certification of Health Care Provider for Employee's Serious Health Condition" and the "FMLA Fitness for Duty Certification" when presented to the employee's health care provider for completion.*

This packet will be provided every twelve months for employees on intermittent or recurring leave for the same incident.

8. Employees requesting FMLA leave must complete the Application for Family or Medical Leave (Attachment 3) and submit it to Employee Services prior to taking the leave. If leave is unforeseeable, the employee must submit the Application for Family or Medical Leave within 15 days of receiving the FMLA paperwork packet from Employee Services.
9. The County will also notify the employee in writing using the Designation Form (Attachment 6) as to whether or not the leave qualifies under the FMLA and whether or not it will be designated as FMLA leave.

G. Certification of the Serious Health Condition

1. Employees are required to provide medical certification for FMLA leave using either the Certification of Health Care Provider for Employee's Serious Health Condition (Attachment 4) if the leave is for the employee's own serious health condition or the Certification of Health Care Provider for Family Member's Serious Health Condition (Attachment 5) if the leave is for a family member's serious health condition.
2. The employee must return the appropriate Certification of Health Care Provider form within fifteen (15) calendar days after receiving it from the County, regardless of whether leave is foreseeable or unforeseeable, unless it is not practicable to do so despite the employee's diligent, good faith efforts. If the certification or recertification is not returned within 15 calendar days and the employee has not provided information about his/her diligent, good faith efforts, the FMLA leave may be denied.
3. Medical certification for a particular condition is in effect for the duration of leave as specified on the certification. If the certification indicates that the employee needs leave for that condition beyond a single leave year (e.g., an intermittent or reduced schedule leave), a new certification will be required annually.
4. Certification of the serious health condition shall include:
  - a. Approximate date the condition began.
  - b. Medical facts sufficient to support the need for leave. The health care provider may include symptoms, diagnosis, hospitalization, doctor visits, prescribed medication, referrals for evaluation/treatment, and/or regimen of continuing treatment.
  - c. Sufficient information on employee's inability to perform essential job duties (based on the employee's "Job Description"), as well as the nature of the restriction and the likely duration of such inability.
  - d. An explanation of why there is medical necessity for leave and an estimate of dates, duration of treatment/recovery periods, or frequency and duration of episodes of incapacity, if intermittent/reduced leave schedule is needed for planned treatment or unforeseeable episodes of incapacity.

Note: the County does not have light duty for personal illness or injury.

5. A complete and sufficient certification or recertification is required. "Incomplete" means one or more of the applicable entries has not been completed. "Insufficient" means the information provided is vague, ambiguous, or non-responsive. The medical certification may be considered insufficient if any answer to a question is "lifetime", "unknown", or "indeterminate". If the medical certification is incomplete or insufficient, the County will provide the employee written notice of what specific information is still needed and allow seven (7) calendar days to fix the deficiencies (unless 7 calendar days is not practicable under the particular circumstances despite the employee's diligent, good faith efforts). If certification or recertification is not returned at all within any required 7-day fix period (and the employee has not provided information about his/her diligent, good faith efforts), or the certification is timely returned but does not fix the deficiencies, leave may be denied.
6. If the medical certification is complete and sufficient, Employee Services may contact the employee's doctor directly to authenticate and/or clarify the certification or recertification as expressly permitted by FMLA guidelines and provisions.
7. Recertification - The County may request recertification in less than 30 days if circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications).

The County may also request recertification if it receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

The employee must provide the requested recertification to the County within 15 calendar days, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

Any recertification requested by the County shall be at the employee's expense unless the employer provides otherwise. No second or third opinion on the recertification will be required.

8. Second Opinion - In accordance with the FMLA, the County has the right to ask for a second opinion if it has reason to doubt the validity of the FMLA Certification of Health Care Provider for Employee's Serious Health Condition form. The County will pay for the employee to get a certification from a second doctor, which the County will select. If necessary to resolve a conflict between the original certification and the second opinion, the County will require the opinion of a third doctor. The County and the employee will mutually select the third doctor and the County will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion. If it is determined that the employee is

not eligible for FMLA, the employee will be retroactively removed from FMLA status.

9. The County has no obligation to notify the employee that a certification has not been received during the 15-day or 7-day periods, however the County makes every attempt to notify the employee in such cases.
10. Employee Services shall maintain all FMLA-related documentation, including certification forms, in a secured separate location that has restricted access. At no time shall employee medical information be placed in an employee's personnel file. Medical documentation is considered confidential and access shall be restricted to a need-to-know basis.

#### H. Employee Status and Use of Leave During FMLA Leave

1. While on leave, employees are requested to report periodically to their Supervisor regarding the status of the medical condition and their intent to return to work. The supervisor must communicate with the employee and document specific expectations and obligations of the employee who is exercising his/her FMLA entitlement, such as how often the employee must report his/her status to their supervisor. (It is recommended that employees check weekly or biweekly with their supervisor.) It is also the responsibility of the Supervisor to communicate the return to work requirements to the employee, such as if a FMLA Fitness for Duty Certification will be required upon the employee's return to work.
2. When an employee returns from FMLA leave, anniversary dates will remain the same (including annual evaluation dates).
3. FMLA leave runs concurrently with all other forms of leave (e.g., sick, annual, or unpaid), and may be paid, unpaid, or a combination of paid and unpaid.
4. If the employee has accrued paid leave (e.g., sick or annual), the employee must use paid leave first and take the remainder of the twelve weeks as unpaid leave.
5. Any leave associated with an on-the-job injury/illness, where the injury/illness is a "serious health condition" as defined in the Family and Medical Leave Act, will be designated as FMLA leave and will run concurrently with Workers' Compensation leave.
6. It is the County's right and obligation to determine whether an employee's leave is eligible for FMLA. If an employee is taking time off from work and the County has reason to believe that such time off falls under the FMLA provisions (e.g., the employee has a known serious health condition), the County can count the leave toward the employee's 12-week entitlement.

An employee may be retroactively placed on FMLA leave after leave has begun if the reason for the leave is determined to be an FMLA qualifying event. Based on the information provided by the employee, the County will determine whether

leave used by the employee shall be counted as FMLA leave and will immediately notify the employee. If leave is subsequently designated as FMLA leave by the County, the employee must comply with the requirements of the FMLA Policy and Procedure.

7. Outside or supplemental employment is generally prohibited during paid and/or unpaid FMLA leave. Exceptions may be granted on a case-by-case basis, but must be approved prior to the commencement of the leave.
  8. Employees in classifications deemed to be "exempt" from the overtime requirements of the Fair Labor Standards Act (FLSA), who take FMLA leave on an intermittent/reduced work schedule basis, will document time worked on an hour by hour basis. Only FMLA qualifying hours will be classified as FMLA.
- I. Employee Benefits During Leave
1. The County will continue the employee's health benefits while an employee is on approved FMLA leave during the leave period at the same level and under the same conditions as if the employee had continued to work in accordance with the following:
    - a. The County will continue to make employee-authorized payroll deductions for all benefits while the employee is receiving sufficient pay.
    - b. When the employee's pay is insufficient to cover payroll deductions for benefits or when an employee has exhausted all leave accruals and is approved for FMLA leave, the employee must continue to make payments for the employee portion of the benefit premiums. Payments should be made payable to "Lake County BCC" and sent to Employee Services no later than the first day of each month for the current month's coverage. If the payment is more than 30 days late, the employee's benefits coverage may be dropped or frozen for the duration of the leave. The County will provide a 15-day notification prior to the employee's loss of coverage.
  2. The County and employee may mutually agree to supplement worker's compensation and/or disability benefits (e.g., short term disability or long term disability) with any other form of paid time off benefits (e.g., vacation, sick) the employee may have.
  3. The County will not require reimbursement for maintaining health care coverage if the employee does not return to work for one of the following reasons.
    - a. If the leave is for the employee's serious health condition and the employee is unable to return to work permanently and separates from County employment because of the continuation, recurrence or onset of the condition. Documentation must include a statement that the employee is unable to perform the duties of his/her position on the date the approved FMLA leave expired.

- b. If the leave is for the serious health condition of a family member and the employee is unable to return to work permanently and separates from County employment because he/she needs to care for the family member. Documentation must include a statement that the employee is needed to care for that family member on the date that the approved FMLA leave expired and the family member's condition still qualifies under FMLA on the date of permanent separation of employment with the County.
- c. An employee who returns to work for at least 30 calendar days, or retires during the 30 days after the employee returns to work, is considered to have "returned" to work.

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, the County will require the employee to reimburse the County the amount it paid for the employee's health and/or dental coverage during the leave period. The rate charged to the employee will be that of the applicable COBRA rate.

#### J. Employee Unable to Return at End of Approved FMLA Leave Period

1. If the employee is unable to return to work at the end of an approved FMLA leave period (which is less than the available 12 weeks) and the employee needs to extend the FMLA leave period (within the 12 weeks/480 hours entitlement) beyond what is stated in the initial/current medical certification, a new medical certification must be submitted within 15 calendar days (unless not practicable to do so despite the employee's diligent, good faith efforts).
2. Leave extending beyond the 12-week FMLA allotment does not carry the return rights under FMLA (as in Section L.1).

#### K. FMLA Fitness for Duty Certification

1. Employees who have taken FMLA leave for their own serious health condition and are returning to work must submit a FMLA Fitness for Duty Certification (Attachment 7), which is to be completed by the employee's physician/health care provider and must state that the employee is able to resume work and perform the essential functions of the position.
2. The FMLA Fitness for Duty Certification must be submitted to Employee Services for approval prior to the employee's return to work from FMLA leave. Failure to present a completed FMLA Fitness for Duty Certification may delay the employee's reinstatement. During the delayed reinstatement period an employee will have 15 calendar days from the completion of the FMLA leave to submit the completed FMLA Fitness for Duty Certification (unless not practicable to do so despite the employee's diligent, good faith efforts).

3. Upon the completion of intermittent or reduced schedule leave, an employee must present a completed FMLA Fitness for Duty Certification (in accordance with item K. 1 and K.2) on or within 15 calendar days of the conclusion of the FMLA leave.
  4. A complete and sufficient FMLA Fitness for Duty Certification is required (see G.5 for definition of “incomplete” and “insufficient”).
    - a. If the FMLA Fitness for Duty Certification is returned but incomplete or insufficient, the County will provide the employee written notice of what specific information is still needed and allow 7 calendar days to fix the deficiencies (unless 7 calendar days is not practicable under the particular circumstances despite the employee’s diligent, good faith efforts). The County may delay reinstatement until a completed FMLA Fitness for Duty Certification is submitted.
    - b. If the FMLA Fitness for Duty Certification is not returned at all within a required 7-day fix period (and employee has not provided information about his/her diligent, good faith efforts and does not provide a new medical certification), or the FMLA Fitness for Duty Certification is timely returned but does not fix the deficiencies the employee may be subject to item K.6.
  5. If it is determined through the FMLA Fitness for Duty Certification that an employee is unable to return to work the department shall initiate the necessary administrative action to discuss the employee’s ability to perform the essential functions of his/her job.
  6. Failure to provide a completed FMLA Fitness for Duty Certification, or the inability to return to work based on the FMLA Fitness for Duty Certification, at the time FMLA leave is concluded may subject the employee to separation of employment by means of non-corrective action.
- L. Employee Status after Leave
1. An employee who takes leave under this policy will be returned to the same position or a position with equivalent status, pay, benefits and other employment terms.
  2. Under specified and limited circumstances where restoration to employment will cause substantial economic hardship to County operations, the County may refuse to reinstate certain highly-paid "key" employees after using FMLA leave.
  3. Employees who fraudulently obtain FMLA leave from the County are not entitled to job restoration or continuation of employee benefits and may be subject to progressive corrective action up to and including termination of employment.

M. Employer Notice Requirements

1. The "Employee Rights and Responsibilities" poster will be posted in areas visible to employees, such as official employment-related bulletin boards and distributed to new hires. (*Attachment 1*).
2. It is the responsibility of County supervisors and management staff to ensure that policies, procedures, management practices and other supervisory activities are in full compliance with the intent of this policy.

VI. **RESERVATION OF AUTHORITY**

The authority to issue or revise this Procedure and/or addendum is reserved to the County Manager. The County Manager may authorize exceptions to this procedure when deemed appropriate.



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Sanford A. Minkoff  
Interim County Manager  
Lake County