

WARREN COUNTY GOVERNMENT

FAMILY AND MEDICAL LEAVE ACT POLICY

PURPOSE

Up to twelve (12) weeks of unpaid, job protected leave will be provided each year to eligible employees to care for a newborn or newly placed adopted or foster child, to care for a child, spouse or parent with a serious health condition, or because of the employee's own serious health condition. The terms in this policy will be defined in the same way as those terms are defined in the Family and Medical Leave Act of 1993 and its applicable rules and regulations. A copy of the law and the rules and regulations is available to employees who request a copy from the Auditor's office.

The County may require the employee to participate under this program.

DEFINITIONS

Adoption means a legal process whereby a child becomes a permanent member of a family into which he or she was not born.

Continuing treatment means a period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition that involves: two or more visits to or treatments by a health care provider; or one visit that results in a planned course of treatment; or any period of incapacity due to pregnancy or prenatal care; or any period of incapacity due to a chronic serious health condition.

Employer means Warren County.

Essential functions means those job functions that an individual must be able to perform in order to hold a position. Essential functions within the meaning of the Americans With Disabilities Act focus on what must be done and not on how they are accomplished.

Health Care Provider means a licensed doctor of medicine or osteopathy or "any other person determined by the Department of Labor (DOL) to be capable of providing health care services." The DOL has determined that the following qualify as health care providers:

Podiatrist

Dentists

Clinical psychologists

Optometrists

Nurse practitioners (if authorized by state law)

Nurse midwives (if authorized by state law)

Clinical social workers

Chiropractors that are authorized to practice in Iowa. (their certifications, however, must be limited to treatment consisting of manual manipulation of the spine to correct subluxation as demonstrated by an x-ray).

Foreign licensed health care providers authorized to practice in that country

Christian Science practitioners listed with the First Church of Christ, Scientists in Boston, Massachusetts are also included in the definition of “health care provider”

Any health care provider from which the County’s health insurance plans will accept certification that a serious health condition exists

Incapable of self-care means that the individual requires active assistance or supervision to provide daily self-care in several of the “activities of daily living” or “instrumental activities of daily living.” Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using a telephone and directory, using a post office, etc.

Intermittent Leave means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave taken on an occasional basis for medical appointments, or leave taken several days at a time, spread over a period of several months, such as for chemotherapy.

Medically necessary means that there must be a medical need for the leave (as distinguished from voluntary treatments and procedures), and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule.

Needed to care for a spouse, son, daughter or parent means both physical and psychological care. It includes situations where, because of a serious health condition, they are unable to care for their own basic medical, hygienic or nutritional needs or safety, or is unable to transport themselves to the doctor, etc. The term also includes providing psychological comfort and reassurance to a seriously ill son, daughter, parent or spouse with a serious health condition who is receiving inpatient or home care.

The term also includes situations where an employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to another medical care facility or nursing home.

Parent means a biological parent or an individual who stands or stood “in loco parentis” to an employee when the employee was a child. Persons “in loco parentis” include persons with day-to-day responsibilities to care for and financially support a child, regardless of whether the person has a legal or biological relationship to the child. The term “parent” does include parents “in-law.”

Physical or Mental Disability means a physical or mental impairment that substantially limits one or more major life activities of an individual. The American With Disabilities Act, Title 42 United States Code section 12101 et sec. further defines the terms.

Serious Health Condition means an illness, injury, impairment, or physical or mental condition that involves:

- a. inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical treatment facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care.
- b. continuing treatment by a health care provider that includes a period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition that involves:
 1. treatment two or more times by or under the supervision of a health care provider; or
 2. treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
- c. any period of incapacity due to pregnancy or for prenatal care.
- d. any period of incapacity due to a chronic serious health condition. A “chronic serious health condition” is defined as that which requires periodic visits for treatment; continues over an extended time; or, may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
- e. a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer’s, severe stroke, or the terminal stages of a disease).

- f. any period of absence to receive multiple treatments, including any period of recovery either for surgery related to an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive days (e.g., cancer, severe arthritis or kidney disease).

Examples of a serious health condition include heart attack, many heart conditions, most cancers, stroke, back conditions requiring extensive therapy or surgery, spinal injury, pneumonia, pregnancy, miscarriage, complications or illness relating to pregnancy, the need for prenatal care, childbirth and recovery from childbirth, severe allergies or stress. Substance abuse also may be a serious health condition, however, FMLA leave may only be taken for treatment of substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. An absence because of the **employee's use of the substance, rather than for treatment**, does not qualify for FMLA leave.

Transitory or minor health conditions for which treatment and recovery are very brief do not constitute serious health conditions for the purposes of the FMLA. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers and headaches, other than migraines, are examples of conditions that do not meet the definition of a "serious" health condition. Likewise, cosmetic treatments, such as treatments for acne or orthodontia, which are elective and not medically necessary, do not constitute serious health conditions. Additionally, routine physical examinations are specifically excluded from the definition of a serious health condition.

Son or daughter means a biological, adopted or foster child, a stepchild, legal ward, or a child of a person standing "in loco parentis".

Spouse means a husband or wife as defined or recognized under state law in the state where the employee resides for purposes of marriage, including common law marriage in states where it is recognized. Iowa recognizes a common law marriage.

ELIGIBILITY

1. Any employee who has been employed for at least 12 months and has worked for at least 1,250 hours in the previous 12 month period is eligible. The 12 months that the employee must have been employed need not be consecutive. If the employee has been maintained on the payroll for any part of a week, including any periods of paid (sick, vacation) or unpaid leave during which other benefits or compensation are provided by the employer (e.g., workers' compensations, group health benefits, etc.), the week counts as a week of employment.

2. Whether an employee has worked the minimum 1,250 hours of service is determined according to the principles of the Fair Labor Standards Act for determining compensable hours. Hours worked is calculated based upon hours actually worked, not hours in pay status. The previous 12-month period is defined as the 12 months immediately preceding the date FMLA leave is to begin.
3. The 1,250 hours may be worked intermittently, and may involve multiple job classes.
4. Eligibility determinations will be made by the Auditor's office, as of the date that the FMLA leave is to begin.

GENERAL

Eligible employees may receive up to 12 weeks of unpaid, job protected leave each year for the following reasons:

1. Because of the birth of a son or daughter of the employee and in order to care for such son or daughter;
2. Because of the placement with the employee of a son or daughter for adoption or foster care;
3. Because the employee is needed to care for the employee's spouse, son, daughter or parent (see parent definition) with a serious health condition;
4. Because of a serious health condition that makes the employee unable to perform his or her job functions;
5. The term "year" is determined as the twelve-month period measured forward from the date an employee first uses any Family and Medical leave.
6. Entitlement to leave for a birth and to care for a son or daughter or for placement of a son or daughter for foster care or adoption expires at the end of the 12 month period beginning on the date of such birth or placement.
7. Where both spouses are employed by the County, the amount of leave provided for care of a newborn or newly placed adopted or foster child, or to care for a parent with a serious health condition is limited to a total of 12 weeks for both spouses.
8. Where both spouses are employed by the County, each spouse may take 12 weeks of leave to care for a spouse or child with a serious health condition.

Paid Leave

Employees are required to use any available accrued paid leave, to run concurrently with the FMLA leave. Employees can, however, reserve two weeks of accrued vacation, if they wish to use it at a later time.

The County is not by this policy authorizing the use of paid leave in any situation not otherwise authorized by its current policies, nor is it abrogating the requirement that paid leave be exhausted for receipt of any benefits authorized by its current policies. All requests for leave of any type shall state on the leave form submitted to the department whether the leave is for Family and Medical Leave Act purposes.

INTERMITTENT LEAVE

Leave for childbirth or adoption shall not be taken intermittently or on a reduced leave schedule, except for prenatal visits, a serious health condition developing from pregnancy, adoption counseling, or the birth or adoption of a special needs child. Leave taken to care for a spouse, child, parent or for the employee's own serious health condition may be taken intermittently or on a reduced schedule, if it is medically necessary. Certification of need shall be provided (see Certification). The taking of leave intermittently or on a reduced leave schedule does not reduce the total amount of leave for which the employee is entitled.

NOTICE REQUIREMENT

When leave for an expected birth or adoption or foster placement is foreseeable, employees shall provide the County with at least 30 days notice of their intention to take leave, or as much notice as is practicable under the circumstances.

When leave for planned medical treatment is foreseeable, employees shall provide the County with at least 30 days notice of their intention to take leave, or as much notice as is practicable under the circumstances. If an employee requests intermittent leave or leave on a reduced leave schedule, the County may require the employee to transfer temporarily to an alternate position with equivalent pay and benefits, which better accommodates the leave schedule.

Employees shall make a reasonable effort to schedule treatment so as not to unduly disrupt the operation of the County.

CERTIFICATION

All requests for leave in order to care for the child, spouse or parent with a serious health condition, or because of the employee's own serious health condition, must be supported by a certification issued by the health care provider of the employee or the health care provider of the employee's child, spouse or parent, as appropriate. Among other things, the certification must state:

- 1) the date on which the serious health condition commenced;
- 2) the probable duration of the condition;
- 3) which part of the definition of "serious health condition" applies, and the appropriate medical facts regarding the condition;
- 4) a statement that either (a) the employee is needed to care for his or her child, spouse or parent and for how long such care is needed; or (b) the employee is unable to perform any one of the essential functions of his or her position due to his or her condition.

The employer may provide certification forms for completion by the health care provider. Use of this form is required. When the leave is foreseeable and at least 30 days notice has been provided, the employee must provide the certification before the leave begins. When this is not possible, the employee must provide the certification within 15 calendar days after the employer requests certification, unless it is not practicable under the circumstances to do so despite the employee's diligent, good faith efforts. Where the employer has requested, and the employee fails to provide the required certification, FMLA leave may be delayed or denied, in which case time off work will be considered unexcused absences subjecting the employee to discipline up to or including termination of employment.

If intermittent leave or leave on a reduced hours basis is requested, the certification also must contain, among other things: (1) the dates of any planned medical treatment; (2) a statement of the medical necessity for and expected duration of intermittent leave or leave on a reduced hours basis; and (3) in the case of leave to care for a family member, a statement that intermittent leave or leave on a reduced hours basis is necessary for the family member's care or to assist in their recovery, and the expected duration and schedule of the requested leave.

Recertifications will be required by the employer as allowed by federal regulation at the employees' expense. The employee must provide the requested recertification within 15 calendar days after the employer requests recertification, unless it is not practicable under the circumstances to do so despite the employee's diligent, good faith efforts. Where the employer has requested, and an employee fails to provide the requested recertification, FMLA leave may be delayed or denied, in which case time off work will be considered unexcused absences subjecting the employee to discipline up to or including termination of employment.

EMPLOYMENT PROTECTION

Eligible employees are entitled to return to the same position they held before taking leave, or to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

BENEFITS PROTECTION

All benefits, which eligible employees had accrued prior to taking leave, shall be retained. However, employees restored to their former or equivalent positions shall not be entitled to the accrual of seniority or employment benefits during any period of unpaid leave.

The County, shall, during any period that an eligible employee takes leave, maintain his/her coverage under its group health, dental, and life insurance plan for the duration of such leave at the level and under conditions of coverage which would have been provided if the employee had continued in employment for the duration of such leave. However, if the employee fails to return from leave within the time required under the Act, the employer may recover from the employee, any group health plan premiums paid for maintaining that coverage while the employee was on leave. If, however, the employee fails to return from leave due to the continuation, recurrence or onset of a serious health condition, covered under the Act or due to circumstances beyond the employee's control, such premiums may not be recovered. The employee must submit medical certification in order to prevent repayment of such premiums.