

## **Family & Medical Leave Act (FMLA)**

### **Part A. Employees Who Qualify for Family and Medical Leave**

Employees of a covered employer are eligible for FMLA leave if they have been employed by that employer for at least 12 months (in the past seven (7) years), have worked at least 1,250 hours during the 12-month period preceding the start of the leave, and work at a worksite where at least 50 employees are employed within 75 miles. Previous periods of employment with the employer can be counted to meet the 12-month employment requirement. Employment periods prior to breaks in employment of 7 years or more are not counted however, unless such breaks are due to National Guard or reserve military duty. Employees who return to work from National Guard or Reserve military duty are credited for the time that they are on military leave to meet the 1,250 hours of service requirement.

Eligible employees may take up to 12 weeks of unpaid FMLA leave in a rolling 12-month period measured forward from the date the employee uses any FMLA leave for the following reasons:

- Birth of a child of the employee and in order to care for that newborn child.
- Placement of a child into the employee's family by adoption or by a foster care arrangement.
- Care of the employee's spouse, child or parent who has a serious health condition.
- Inability of the employee to perform the essential functions of the employee's position due to the employee's own serious health condition.
- Federal covered active duty (call-up or deployment to a foreign country in the Armed Forces) of the employee's spouse, child, or parent where qualifying circumstances justify the employee's need for leave.

Eligible employees can take up to 26 weeks of FMLA leave in a single 12-month period because their spouse, child, parent, or next of kin (nearest blood relative) who is a Covered Servicemember is seriously ill or injured (or aggravates a pre-existing illness or injury) as a result of serving in the line of duty on covered active duty in the Armed Forces. This single 12-month period will be measured forward from the date leave is first taken for this reason.

Eligible employees can take FMLA leave for their biological children, adopted children, foster children, stepchildren, legal wards, or children for whom the employee has day-to-day responsibilities to care for or financially support. Eligible employees can take FMLA leave for their biological, adoptive, step or foster parent or for any person who had day-to-day responsibilities or provided financial support for them as children.

<b>Birth &amp; Care of Employee's Child, or Placement of a Child into the Employee's Family by Adoption or by a Foster Care Arrangement</b>
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FMLA leave for the birth, care and/or placement of a child into an employee's family may only be taken within the 12 months after the date of the birth or placement of the child. In the case of unpaid leave for the birth, care or placement of a child, intermittent leave or working a reduced number of hours is not permitted, unless both the employee and the employer agree.

**Notice Required** - When the necessity of leave is foreseeable due to the expected birth or placement of a child, the employee must provide the employer at least 30-days' notice of the employee's intention to take leave. If the date of birth or placement of a child requires the employee's leave to begin less than 30 days from the date of notice to the employer, the employee must provide such notice as soon as practicable. Failure to provide notice as required in this paragraph may result in delay of leave.

<b>Serious Health Condition of Employee, Employee's Spouse, Child or Parent</b>
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For purposes of this policy, a serious health condition means an illness, injury, impairment or physical or mental condition that involves:

- An overnight stay in a medical care facility including a period of incapacity or any subsequent treatment in connection with said stay; or
- Continuing treatment by a healthcare provider including:
  - A period of incapacity of more than 3 consecutive full calendar days, and under certain circumstances, any subsequent treatment or period of incapacity relating to the same condition that also involves either a) treatment by a health care provider 2 or more times within 30 days of the incapacity, or b) treatment by a healthcare provider on at least 1 occasion with a supervised regimen of continuing treatment (in either case, the first or only treatment by a healthcare provider must be in person and within 7 days of the first day of the incapacity);
  - Any period of incapacity due to pregnancy or for prenatal care;

- Any period of incapacity or treatment for such incapacity due to a chronic serious health condition [a condition that requires periodic visits (at least 2 per year) for treatment by a healthcare provider or nurse, continues over an extended period of time, and may cause episodic incapacity];
- A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, if under the continuing supervision of a health care provider; or
- Any period of absence to receive multiple treatments 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 full consecutive days in the absence of medical intervention (such as dialysis or chemotherapy).

#### Covered Servicemember Family Caregiver Leave

FMLA leave is available to care for a spouse, child, parent, or next of kin who is a covered servicemember with a serious injury or illness incurred (or aggravated) in the line of active duty who is undergoing medical treatment, recuperation or therapy, is on out-patient status, or is on the temporary disability retired list. A covered servicemember includes a member of the Armed Forces (including a member of the National Guard or Reserves) and also includes certain covered veterans so long as the veteran was honorably discharged or released at any time during the 5 years preceding the first day of the caregiver leave. Leave must be commenced within 5 years of the veteran's active service.

**Notice Required-** An employee must provide sufficient information for the employer to reasonably determine whether FMLA may apply to a leave requested for the serious health condition of an employee, the employee's spouse, child or parent or for the illness or injury of a covered servicemember. Calling in "sick" is not sufficient. An employee's failure to respond to questions to determine if FMLA applies to the leave request may result in denial of FMLA protection. If an employee has been previously approved for FMLA leave, a subsequent request must include specific reference to the reason for the leave or to the FMLA.

Where the necessity for leave is due to a family member's or an employee's own serious health condition or a covered servicemember's serious illness or injury and is foreseeable at least 30 days in advance based on planned medical treatment, the employee must:

- Give at least 30 days' notice; and
- Make a reasonable effort to schedule the treatment so as not to unduly disrupt the operation of the employer subject to approval of the healthcare provider.

Where the need for such leave is known less than 30 days in advance, the employee must give notice as soon as practicable under the circumstances. Where the need for leave is unforeseeable, the employee must, at a minimum, follow regular call-in procedures but must always give notice as soon as possible under the circumstances. When less than 30 days' notice is provided, an employee must respond to a request for explanation as to why it was not practicable to provide 30 days' notice.

**Failure to provide notice as required above may result in delay of leave.**

**Certification of Healthcare Provider –** Any leave request based on a family member's or employee's own serious health condition or for a covered servicemember's serious illness or injury, must be supported by certification from an authorized healthcare provider (or, in the event of covered servicemember leave, an Invitational Travel Order/Authorization). The employee must provide a copy of the certification in a timely manner. [(15) calendar days will be allowed to provide the certification.] Required Certification forms will be made available.

**Second Opinions –** The employer reserves the right to obtain at its expense a second opinion from a physician we designate. If the second opinion differs from the opinion in the original certification, we may require that a third opinion be obtained at our expense from a physician designated jointly by the employer and employee. Such opinion shall be final and binding. The employer will not seek a second opinion if the leave request is related to the care of a covered servicemember and the certification is signed by a healthcare provider affiliated with DOD, VA or TRICARE .

#### Family Member Active Duty Leave

FMLA leave is available for an employee who has a qualifying urgent circumstance arise due to the employee's spouse, child or parent being on covered active duty. Covered Active Duty means (in the case of Reserves/National Guard) being notified of an impending Federal call or order to deployment in a foreign country and also means (for either Active Duty Military or Reserves/National Guard) deployment to a foreign country. Qualifying circumstances for leave include:

- 1) Short-notice deployment (up to 7 days of leave).
- 2) Military events and related activities.
- 3) Childcare and school activities.

- 4) Parental care leave (to care for the military member's parent who is incapable of self-care when care is necessitated by the Covered Active Duty).
- 5) Financial and legal arrangements.
- 6) Counseling related to the deployment.
- 7) Rest and recuperation (up to 15 days of leave).
- 8) Post-deployment activities (available for up to 90 days from termination of active duty status).
- 9) Other agreed upon events or activities.

**Covered Active Duty Leave Notice and Certification** – Employees who request FMLA leave due to the above circumstances resulting from their spouse, parent or child being called up for or being deployed to Covered Active Duty in the Armed Forces must provide such notice as is reasonable and practicable in the circumstances and will, at minimum, be asked for certification of the family member's Covered Active Duty status. Required Certification forms will be made available.

**Employer's Notice of Eligibility, Rights and Responsibilities** – You will be notified of your eligibility for FMLA leave, and if eligible, of your rights and responsibilities associated with that leave, within 5 business days of your leave request. If any required Certification is not provided within 15 calendar days or is incomplete, you will be given notice of and will have 7 calendar days to cure any deficiency. We may seek authentication or clarification of a Certification from a healthcare provider after an employee has been given the opportunity to cure any deficiency. Any failure to provide a timely and complete certification may result in the delay or denial of FMLA leave.

**Intermittent Leave** – In the case of unpaid leave for serious health conditions, or to care for a seriously ill or injured covered servicemember, the leave may be taken intermittently or on a reduced hours basis only if such leave is medically necessary. Active Duty leave may be taken intermittently. In the case of unpaid leave for the birth, care or placement of a child, intermittent leave or working a reduced number of hours is not permitted, unless both the employee and the employer agree. Employees must arrange medical treatment and appointments to minimize work disruptions. In circumstances where the intermittent or reduced hours leave is foreseeable based on planned treatment or recovery, or where the employer agrees to provide intermittent leave for the birth or placement of a child, the employer has the option, in its sole discretion, to require the employee to transfer to a temporary alternative job for which the employee is qualified and which accommodates the intermittent leave or reduced hours leave better than the employee's regular job. The temporary position will have equivalent pay and benefits as the employee's regular job. Employees must comply with the employer's regular call-in procedure for unscheduled intermittent leave. **Special rules may be applied for instructional employees.**

**Substitution of Paid Leave** – Employees must apply any accumulated paid time off (sick leave, vacation or personal leave) against any FMLA leave that would otherwise be unpaid leave. Employees may be entitled to paid leave pursuant to workers' compensation or short term disability benefits. During any required waiting period or after such paid leave is exhausted, employees are required to use any accumulated paid time off during the FMLA leave period. Once any paid time off benefits are exhausted, the balance of the leave will be without pay.

**Other Leave Counts Against FMLA Leave** – FMLA leave entitlement will run concurrently with any other paid leave such as short-term disability that qualifies as FMLA leave. Similarly when an FMLA leave is also covered by state law (such as under workers' compensation laws), state leaves will run concurrently with the FMLA leave. For example, if an employee is off work due to workers' compensation leave, that leave time will count against an eligible employee's 12 week allotment for the employee's own serious health condition if it qualifies as such under the FMLA.

<b>Other Provisions</b>
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**Benefits** – During FMLA leaves of absence, the employer will continue to pay its portion of the health insurance premiums and the employee must continue to pay his/her share of the premium. Failure of the employee to pay his/her share of the health insurance premium may result in loss of coverage. If the employee fails to return from leave for any reason other than the continuation, recurrence or onset of a serious health condition or circumstances beyond the employee's control, the employer may recover from the employee any premiums for group health coverage paid by the employer during the leave.

An employee is generally not entitled to accrue additional benefits or seniority during unpaid FMLA leaves (unless otherwise provided for in applicable policies). However, at the end of the leave, the employee's benefits will be resumed in the same manner and at the same levels as provided when the leave began, subject to any changes in benefit levels that may have taken place during the period of FMLA leave.

**Duty of Employees** – We may require an employee on FMLA leave (including intermittent leave) to report periodically on his/her status and intention to return to work, and may also require periodic recertification of the medical condition. If an employee on

leave determines that they need to take more or less FMLA leave than originally anticipated, they must notify their immediate supervisor within 2 business days.

**Married Coworkers** – If a husband and wife both work for the same employer, they are limited to a combined total of 12 weeks of FMLA leave because of the birth, adoption, or foster care placement of a child, or to care for a parent with a serious health condition. Each would remain eligible to take FMLA leave individually for other FMLA-qualifying reasons from the time that remains out of the original 12-week leave designation. If a husband and wife both work for the same employer and take FMLA leave to care for a covered servicemember with a serious illness or injury, they are limited to a combined total of 26 workweeks of leave during the single 12-month period for all FMLA-qualifying reasons. They remain subject to the 12-week limit for any leave other than covered servicemember caregiver leave.

**Return to Work** – Unless an employee is designated as a “key employee,” employees who return to work before or upon the expiration of the FMLA leave are entitled to return to their job or an equivalent position without loss of benefits or pay. Employees who do not return to work upon expiration of the FMLA leave period may not be guaranteed that they will return to their same or an equivalent position. Before you will be allowed to return from medical leave, you will be required to present your employer with a note from your health care provider indicating that you are capable of returning to work and performing the essential functions of your job with or without reasonable accommodation. Where required, your employer will consider making reasonable accommodation for any disability you may have in accordance with applicable laws. Any extensions of leave beyond the allowed FMLA period must be requested in writing and will be considered pursuant to obligations under state and federal law.

Employees who submit false information about their medical conditions, claims for leave or medical documentation will be subject to termination from employment.

If you have any questions about this policy or your rights under the FMLA, please direct them to your supervisor or the Diocesan Director of Human Resources. This policy is intended to follow the provisions of the federal Family Medical Leave Act.

## **PART B. Leaves for Employees Who Are not Eligible for FMLA Leave**

Full-time regular and part-time regular employees who are not eligible for FMLA leave as set forth above in Part A, are subject to the following terms and conditions:

1. Leave requests must be made at least thirty (30) days in advance of the date the employee would like the leave to begin or, in emergency situations, with as much advance notice as is practicable, using the employer's official Leave-of-Absence Request Form.
2. The certification requirements and the conditions for required use of accrued time off, benefits accrual, and continuation of group health insurance during leave set forth in Part A apply to all leave requests.
3. Generally, unless applicable state or local law requires otherwise, leaves will be limited to a thirty-day maximum duration, except leaves for the employee's own serious health condition, including pregnancy-related disabilities which may be granted for up to an eight-week period and which may be taken intermittently. Reasonable accommodations for disabilities will be considered.
4. Unless applicable state or local law requires otherwise, reinstatement will not be guaranteed to any employee requesting a leave under this Part B. However, we will endeavor to place employees returning from leave in their former position or a position comparable in status and pay, subject to budgetary restrictions, the employer's need to fill vacancies, and its ability to find qualified temporary replacements.

All questions regarding leaves of absence should be directed to the Diocesan Director of Human Resources. If a dispute arises about whether leave qualifies as FMLA leave, we will discuss resolution of the dispute with the employee. Any discussions or decisions about leave will be documented. Leave-of-Absence Request Forms are also available from the HR office.

As with all other Diocesan employment policies, nothing in this policy is intended to supersede or waive the right of the Diocese, as a religious institution, to defend its religious freedoms and assert any defenses available to it under the law.