



# Cochise County Board of Supervisors

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**Procedure Title: Family Medical Leave Act (FMLA)**

**Procedure Number: 2213.1**

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**Effective: February 1, 2017**

**Supersedes:**

**Last Reviewed/Updated:**

**Scope/Coverage: All eligible Cochise County employees**

**Policy Contact: Director of Human Resources**

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## **I. Compliance**

- A. This Human Resources policy is intended to implement the provisions of the FMLA [29 U.S.C. 2601 (et. Seq.)], and the regulations published under the FMLA (29 C.F.R. Part 825).
- B. Any amendments or judicial interpretations which directly conflict with the provisions of this policy shall be deemed to supersede the provisions of this policy.

## **II. Links to Types of FMLA Fact Sheets:**

- **[Types of Qualifying FMLA Leave as Defined by The U.S. Department of Labor](#)**
- **[FMLA Definition of "son or daughter"](#)**
- **[Military Family Leave Provisions Under FMLA](#)**
- **[Qualifying Exigency Leave Under FMLA](#)**
- **[Military Caregiver Leave for Current Service Member](#)**
- **[Military Caregiver Leave for Veteran Service Member](#)**

## **III. Leave Compensation**

- A. The FMLA is not considered a replacement for existing leave categories permitted by Cochise County. FMLA leave may be paid or unpaid; however, an eligible employee will be required to use paid leave concurrently with their FMLA leave.
- B. When an employee has exhausted all paid leave, the employee will be on a leave without pay status for the remainder of their FMLA entitlement. An exempt employee who is on an approved FMLA leave of absence is required to use any paid leave available for partial day absences.



# Cochise County Board of Supervisors

Public Programs...Personal Service  
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- C. Employees in a paid status on approved FMLA shall be eligible to receive Holiday pay according to Cochise County policy. Holiday hours paid will not be counted against the employee's FMLA entitlement.
- D. An employee that is on an approved workers compensation absence and meets the eligibility requirements for FMLA may qualify under the FMLA. The on-the-job injury or illness must meet the requirements for eligibility as defined as a *serious health condition* pursuant to the FMLA. The workers' compensation absence would run concurrent with the FMLA leave and count toward an employee's FMLA entitlement.
- E. All types of paid and unpaid leaves authorized by Cochise County will run concurrently with FMLA leave. The Department Director or Elected Official may approve additional leaves (paid or unpaid), up to ninety (90) days, after the exhaustion of the 480 hours of FMLA with County Administrator approval. The eligible employee must request an extension for the additional leave prior to the exhaustion of their FMLA leave.
- F. Employees on approved FMLA shall be eligible to receive awards and merit increases that the employee would otherwise be qualified and entitled to if not on leave.

## IV. Employee Process for FMLA

- A. An eligible leave of absence shall be counted toward an employee's FMLA allotment even if the employee does not specifically request FMLA leave if the reason for the leave qualifies under the FMLA and the leave is properly documented by the employee's Appointing Authority and Human Resources.
- B. An eligible employee will be placed on provisional leave pending receipt of more complete documentation if the information is unavailable, incomplete or inadequate. Provisional leave may be counted against the employees qualifying hours of FMLA leave entitlement even if the Certification of Health Care Provider form or the Certification of Qualifying Exigency for Military Family Leave Certification form is not received. The employee will be notified of approved FMLA by Human Resources when the completed medical certification has been received and approved.
- C. An employee requesting FMLA leave must provide verbal or written notice of the need for the leave to Human Resources or the Department Director or Elected Official or Designee.
- D. The preferred method of written notification for the employee to complete is the Request for FMLA Leave form. If the written notification from the employee or responsible party is not on the Request for FMLA Leave form, then the Human Resources Department will provide the form for completion.
- E. If the employee or responsible party provides verbal notification, then the Human Resources Department will send the Request for FMLA Leave form to be completed.



# Cochise County Board of Supervisors

Public Programs...Personal Service  
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- F. If an employee is incapacitated, a family member or other responsible party may submit the Request for FMLA Leave on behalf of the employee.
- G. The employee must provide at least thirty (30) days' notice before FMLA leave is to begin if the need for the leave is foreseeable.
- H. If the reason for the leave could not have been foreseen thirty (30) days in advance (i.e. due to a change in circumstances or medical emergency) the employee must submit the request for leave as soon as practicable after the need for leave is discovered.

## V. Calculation of Leave

- A. An employee that is eligible under FMLA is entitled up to twelve (12) weeks or the equivalent of 480 hours of unpaid leave, for an FMLA-qualifying reason within a specified twelve-month period. An employee that is eligible under military special leave entitlement FMLA is entitled up to twenty-six (26) weeks or the equivalent of 1040 hours of unpaid leave to care for a covered service member during a single twelve (12) month period. The specified twelve (12) month period will be determined on a "rolling" basis. To calculate the specified twelve-month period, the Human Resources Department must determine:
  - 1. Whether the employee has utilized any documented FMLA leave during the twelve (12) months preceding the date that the new leave is to begin. This includes any provisional FMLA leave for the employee.
  - 2. If the employee has not previously used any FMLA leave during the preceding twelve (12) month period, the employee is eligible to use up to the full twelve (12) week or the equivalent of 480 hours allotment or full twenty-six (26) weeks or the equivalent of 1040 hours allotment for military special leave.
  - 3. If the employee has previously used some, but not all, of the twelve (12) weeks or the equivalent of 480 hours allotment of FMLA leave or used some, but not all, of the twenty-six (26) weeks or the equivalent of 1040 hours allotment for military special leave, the employee may be permitted to use the remainder of the allotment. However, the employee may only be permitted to use the allotment if an FMLA-qualifying reason exists. During the single twelve (12) month period an eligible employee's FMLA leave entitlement (FMLA and/or military special leave) is limited to a combined total of twenty-six (26) work weeks of FMLA leave for qualifying reasons.
  - 4. For example, a covered employee requests twelve (12) weeks of FMLA leave to begin May 1 of this year for a permissible Medical Leave reason. Employee had previously used six (6) weeks of approved FMLA leave from July 11 to August 19 of last year for a permissible Family Leave reason. Thus, the Employee only has six (6) weeks of his twelve (12) weeks of FMLA allotment remaining because the approved Family Leave used during the preceding twelve (12) months counted towards the employee's FMLA



# Cochise County Board of Supervisors

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allotment. However, the employee may only utilize the remaining six (6) weeks allotment if the Medical Leave reason exists.

## VI. Employee Documentation Required

The types of documentation required from an employee will depend upon whether the request is for "Family Leave", "Medical Leave" and "Military Leave."

### A. Basic Leave:

1. **Family Leave.** If the request for leave is due to the anticipated birth of a child (and if sufficient documentation has not been provided by the employee), Human Resources shall request a Certification of Health Care Provider form (or other similar documentation) substantiating the anticipated or actual date of birth. If the leave is due to the placement of a child through adoption or foster care, Human Resources shall request a copy of a letter from the adoption or foster care agency placing the child in the parents' care and/or custody or similar documentation substantiating the date of placement.
2. **Medical Leave.** If the leave is due to a "serious health condition" (and if sufficient documentation has not been provided by the employee), Human Resources shall request the completion of a Certification of Health Care Provider form within fifteen (15) calendar days of the date of the request. The Certification of Health Care Provider form is the ONLY acceptable form that may be used to obtain information from the employee's health care provider. In the event of a medical emergency or other unforeseeable event which prevents the completion of the Certification of Health Care Provider form, the employee must contact Human Resources as soon as practicable to request an extension.

### B. Military Leave:

1. **Military Care Giver Leave.** If the leave is to care for a covered service member with a serious injury or illness, the request must be supported by:
  - a) A Certification of Health Care Provider form completed by an authorized health care provider; or
  - b) A copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family; or
  - c) Documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers as sufficient certification of the covered veteran's serious injury or illness; and additional documentation may required as confirmation of the family relationship to the enrolled service member and veteran's discharge date and status.
2. **Military Qualifying Exigency Leave** for a qualifying exigency must be supported by a copy of the covered military member's:



## Cochise County Board of Supervisors

Public Programs...Personal Service  
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- a) Active Duty orders and Qualifying Exigency for Military Family Leave form providing the appropriate facts related to the qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party; or
- b) Rest and Recuperation leave orders, or other documentation issued by the military setting forth the dates of the military member's leave.

### VII. Use of Intermittent or Reduced Schedule Leave

Approval of an employee's use of intermittent or reduced schedule leave will depend on whether the request is for "Family Leave", "Medical Leave or Military Care Giver Leave", or "Qualifying Exigency".

**Intermittent leave** is defined as leave taken in increments of time due to a qualifying event rather than a continuous period (e.g., leave for chronic health condition/episode or leave taken several days at a time for chemotherapy treatments over a period of months).

**Reduced schedule leave** is a change in an employee's schedule for a period, normally from full-time to part-time (e.g. an employee works part-time because he/she is recovering from a serious health condition and is not capable of working full time).

A request for intermittent or reduced schedule leave is based on the following:

1. For "Family Leave," a Department Director or Elected Official may, but is not required to, permit the employee to take FMLA on an intermittent or reduced schedule basis, including absences of less than a full day. A Department Directors or Elected Officials determination that FMLA will not be approved on an intermittent or reduced scheduled basis does not mean that the Department Director or Elected Official may deny an otherwise qualifying FMLA request altogether.
2. For "Medical Leave or Military Care Giver Leave" the Department Director or Elected Official must approve FMLA on an intermittent or reduced schedule basis if the use of intermittent or reduced schedule FMLA is determined to be "medically necessary" by a Health Care Provider. When the use of intermittent or reduced schedule FMLA is determined to be "medically necessary" by a Health Care Provider, a Department Director or Elected Official may work with the employee to determine the best means of scheduling of the intermittent or reduced schedule FMLA based upon the operational needs of the organization.
3. For a "Qualifying Exigency", the Department Director or Elected Official must approve FMLA on an intermittent or reduced schedule basis if the required documentation is provided. The Department Director or Elected Official may work with the employee to determine the best means of scheduling of the intermittent or reduced schedule FMLA based upon the operational needs of the organization.



# Cochise County Board of Supervisors

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4. If FMLA is approved on an intermittent or reduced schedule basis, an employee may not be required to take more FMLA leave than necessary. If an employee takes leave on an intermittent or reduced leave, only the amount of leave actually taken will count toward the leave entitlement. The FMLA leave time will be calculated using the smallest increment of time taken for leave subject to a one (1) hour minimum.
5. If it is physically impossible for an employee requesting intermittent leave or a reduced leave schedule to begin or end work mid-way through a shift, the entire period that the employee is required to be absent may be designated as FMLA leave and counts against the employee's FMLA entitlement. Even in the most limited circumstances, the County shall restore the employee to the same or equivalent position as soon as possible.
6. An employee's request for intermittent or reduced schedule FMLA must be made in the same manner and within the same time restrictions as a request for FMLA leave on a consecutive day basis.

## **VIII. Use of Accrued Sick and Personal Leave and Paid Compensatory Time During FMLA Leave**

All appropriate paid leave must be used as part of the eligible hours of FMLA leave allotment.

An employee may also use any available paid compensatory time during the FMLA, however, paid compensatory time is not deducted from an employee's FMLA leave allotment. If the Appointing Authority approves the use of compensatory time during an approved FMLA period, the paid compensatory time is not deducted from the employee's eligible FMLA hours. The FMLA leave time would be extended by the amount of approved compensatory time.

Any remaining FMLA leave, after all accrued and paid leave has been exhausted, will be an approved leave of absence without pay.

The Department is responsible for tracking all FMLA hours used by the employee and shall submit the total amount of FMLA leave used by an employee to Human Resources.

## **IX. APPROVAL OF FMLA LEAVE**

- A. The required completed FMLA forms from the eligible employee must be submitted to the Human Resources Department to determine if the requested leave qualifies under the FMLA. The Human Resources Department shall notify the employee, in writing, if the leave is approved as FMLA leave. If the leave is unapproved, the employee shall receive notification from the Human Resources Department explaining the reason for non-approval.
- B. If the employee has not submitted the required documentation for Human Resources for FMLA eligibility determination, the employee shall be notified immediately in writing that the leave is being provisionally approved as FMLA leave subject to the receipt and review of the Certification



## Cochise County Board of Supervisors

*Public Programs...Personal Service*  
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of Health Care Provider form or the Certification of Qualifying Exigency for Military Family Leave form or other required documents.

- C. Upon receipt of the completed of Certification of Health Care Provider or the Certification of Qualifying Exigency for Military Family Leave form or other required documents, Human Resources shall review the documentation to determine if the reason for the leave qualifies for purposes of FMLA Leave. The Human Resources Department will notify the employee, in writing, that the leave is approved. The approval letter should state the start date of the FMLA leave and the amount of FMLA leave the employee is eligible to use.
- D. If the Human Resources Department determines that the documentation provided is not sufficient to conclude that the employee is eligible for FMLA leave, then the Human Resources Department may:
  - 1. Request that the employee obtain clarification from the Health Care Provider. The employee shall have the opportunity to resolve any deficiencies in the Certification of Health Care Provider form or the Certification of Qualifying Exigency for Military Family Leave form; or
  - 2. Directly contact the Health Care Provider for verification or clarification.
- E. If the FMLA is for the employee's own serious health condition, the Human Resources Department may request that the employee receive an additional examination by a Health Care Provider of the County's choice. The additional examination shall be at the expense of Cochise County. If the additional examination concludes that the employee's condition is not a "serious health condition," Human Resources may request that the employee receive a third examination by a Health Care Provider designated by agreement of Human Resources and the employee. The third examination shall also be at the expense of Cochise County. The decision made by the third examination shall determine if the leave qualifies under FMLA.

### **X. Adverse Employee Consequences for Non-Compliance**

In the event an employee is absent without approved leave, the employee may be delayed or denied the use of paid leave if:

- A. An employee fails to complete the request for FMLA leave; or
- B. The Certification of Health Care Provider form or the Certification of Qualifying Exigency for Military Family Leave form is incomplete; or
- C. The employee fails to submit the application or Certification of Health Care Provider form or the Certification of Qualifying Exigency for Military Family Leave form or any other required documents within the fifteen (15) day time frame.



# Cochise County Board of Supervisors

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- D. If an employee fails to obtain and return the required documentation to the Human Resources Department within fifteen (15) days, the Human Resources Department shall notify the employee of the omission and shall require submission of the documentation. Cochise County views an employee who fails to submit the required documentation within the required time frame or fails to contact the Human Resources Department as insubordinate, abandoning their job or neglecting their job duties and may be subject to discipline, up to and including termination. Additionally, if the County revokes the provisional approval of the employee's leave, the employee may be deemed absent without approved leave.

## **XI. Continuation of Medical Benefits**

- A. During the period of the FMLA leave, the employee's health insurance coverage will be maintained at the same level and under the same conditions that coverage would have been provided if the employee had remained at their job. Any dependent and other supplemental coverage will continue to be the employee's responsibility.
- B. In the case of unpaid leave, the employee should contact the Human Resources Department to plan for payment of any benefits that would normally have been paid through a payroll deduction.

## **XII. Employment Upon Return to Work**

An employee returning from an approved FMLA leave will be restored to the same or like position with the same rate of pay and level of benefits which was held prior to the leave. An exception to this is those who are in grant funded or special revenue funded positions.

## **XIII. Title VII of the Civil Rights Act Of 1964**

Nothing in the FMLA modifies or affects any Federal or State law prohibiting discrimination under Title VII, GINA (Genetic Information Nondiscrimination Act) or disability.

## **XIV. Genetic Information Nondiscrimination Act (GINA)**

GINA defines genetic information, in part, as including family medical history. Any genetic information obtained in the certification process shall be kept confidential.

## **XV. Records and Confidentiality**

All FMLA documentation and certification shall be kept at the Human Resources Department. Medical documentation shall be kept confidential pursuant to Health Insurance Portability and Accountability Act (HIPAA).