



POLICY AND PROCEDURE

SUBJECT: Family and Medical Leave Act (FMLA)
Policy and Procedure

DATE: May 3, 1999

NUMBER: 100-40

PURPOSE:

The Family and Medical Leave Act (FMLA) is a federal mandate requiring covered public and private sector employers to provide eligible employees with a maximum of twelve weeks of leave as a result of the employee's own serious health condition; the serious health condition of a spouse, parent, or child; or the birth or placement of a child and to return the employee to either the same or an equivalent position. In an effort to minimize the financial impact upon employees and their families, Fulton County requires employees to utilize any vacation, sick, and/or holiday leave available prior to being placed on unpaid status during family leave.

This policy is intended to assist employees in achieving the delicate balance between work life and family matters by providing leave for special health or family related needs. This policy is also intended to encourage a more satisfied and productive work force as the result of increased family stability and economic security.

POLICY:

It is the policy of Fulton County Government to provide eligible employees with leave for qualifying reasons to attend to family needs and to assure those employees that they will be able to return to work into the same or an equivalent position with all of the same benefits, pay, and terms and conditions of employment.

It is further the policy of Fulton County Government to comply fully with each and every requirement as set forth by the Family and Medical Leave Act without regard to race, color, religion, sex, national origin, age, disability, sexual orientation, or political affiliation.

ELIGIBLE EMPLOYEES:

Any and all Fulton County employees who have:

- (A) Been employed with Fulton County for a minimum of twelve (12) months; and
- (B) Worked for a minimum of twelve hundred and fifty (1,250) hours during the immediately preceding twelve months.

REASONS FOR WHICH FAMILY AND MEDICAL LEAVE MAY BE GRANTED:

- (A) The birth of a child and to care for the newborn child;
- (B) Placement of a child for adoption or foster care;
- (C) To care for the spouse, child, or parent with a serious health condition;

- (D) To care for the employee's own serious health condition **which renders the employee unable to perform one or more of the essential functions of his/her job;**

INITIAL CERTIFICATION OF A "SERIOUS HEALTH CONDITION":

A "serious health condition" refers to an illness, injury, impairment, or physical or mental condition which requires any one of the following:

- (A) An overnight stay at a hospital, hospice or residential medical care facility; or
- (B) A period of incapacity of at least four calendar days combined with either of the following:
- (1) any period of incapacity relating to the same condition which requires treatment at least two times by a nurse or physician's assistant under the direct supervision of a health care provider;
 - (2) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider;
- (C) Any period of incapacity as a result of pregnancy or the necessity for prenatal care; or
- (D) Any period of incapacity or treatment which meets any one of the following criteria:
- (1) Required periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under the direct supervision of a health care provider;
 - (2) Continues over an extended period of time (this includes recurring episodes of a single underlying condition);
 - (3) Causes episodic rather than a continuing period of incapacity.
- (E) A period of incapacity which is long-term due to a condition for which treatment may not be effective (eg: Alzheimer's, a severe stroke or the terminal stages of a disease); or
- (F) Any period of absence to receive multiple treatments by a health care provider.

Upon an employee's absence for a minimum period of four (4) calendar days, the Appointing Authority or his/her designee shall send an employee a Certification Form, via certified mail, along with instructions for the employee to have the form completed by his/her health care provider (or by the parent, child, or spouse's health care provider when the absence is the result of the employee caring for a family member with a serious health condition) and returned to the Appointing Authority within fifteen calendar (15) days so that the Appointing Authority may determine whether or not the leave must be charged as Family and Medical Leave. This requirement is applicable in all situations other than those situations in which (i) an employee is on approved vacation, holiday, or compensatory leave or (ii) an employee has "called in sick"

and, upon inquiry, has informed the Appointing Authority that the condition is not sufficiently severe to require the services of a health care provider.

At no time may a supervisor contact an employee's health care provider, either directly or indirectly. All contact with an employee's health care provider must be made by the employee or by a health care provider representing Fulton County solely for the purpose of clarifying and/or authenticating the Certification or the terms thereof.

Any employee who requires Family and Medical Leave for the purpose of caring for a seriously ill spouse, child, or parent may be required to obtain the same certification from the family member's health care provider.

At the request of the Appointing Authority or his/her designee(s), a health care provider representing Fulton County shall contact the employee's health care provider, with the employee's written permission, solely for the purpose of clarifying and/or authenticating the Certification or the terms thereof.

1. Second Opinion of Initial Certification

At the sole discretion of the Appointing Authority, an employee seeking certification may be required to submit to a medical examination such that a second opinion may be rendered as to the employee's entitlement to certification. This "second certification" will be at the expense of the County. When the Appointing Authority determines, for good cause, that a second opinion shall be required, then he/she must contact the Finance department to arrange for funding for the second opinion. The Finance department shall make the required funds available.

Pending the opinion of the second physician, the employee will be provisionally entitled to the benefits and protections afforded by certification.

Should the required documentation ultimately establish that the employee is not entitled to certification, then any time off will be counted against the employee's sick leave balance and, in the absence of an available sick leave balance, the employee's vacation and/or holiday leave balance and the time taken will not be designated as Family and Medical Leave. At any time, the employee may request, in writing, that his/her compensatory time be charged. Otherwise, leave in excess of accumulated balances shall be charged as leave without pay. Should the required documentation ultimately establish that the employee is entitled to certification, then any time off will still be counted against the employee's sick leave balance and, in the absence of an available sick leave balance, the employee's vacation and/or holiday leave balance. However, the time taken will additionally be designated as protected Family and Medical Leave. At any time, the employee may request, in writing, that his/her compensatory time be charged. Otherwise, leave in excess of accumulated balances shall be charged as leave without pay.

Upon a written request, the County shall furnish the employee with a copy of the examining physician's conclusions within 7 business days of receipt of the employee's request.

2. Third & Binding Opinion on Initial Certification

Should the conclusions of the second examination contradict the conclusions of the initial examination, at its sole discretion, the Appointing Authority may require the employee seeking initial certification to submit to a third and binding medical examination. This third and binding examination will also be at the expense of the County. The health care provider conducting the examination will be a health care provider agreed upon by the County and the employee. When the Appointing Authority determines, for good cause, that a third opinion shall be required, then he/she must contact the Finance department to arrange for funding for the third opinion. The Finance department shall make the required funds available.

Pending the certification decision of the final physician, the employee will remain provisionally entitled to the benefits and protections afforded by certification.

Should the employee fail to act in good faith in making a selection concerning the appropriate physician, then the employee shall be bound by the determination of the second examination.

Should the required documentation ultimately establish that the employee is not entitled to certification, then any time off will be counted against the employee's sick leave balance and, in the absence of an available sick leave balance, the employee's vacation and/or holiday leave balance and the time taken will not be designated as Family and Medical Leave. At any time, the employee may request, in writing, that his/her compensatory time be charged. Otherwise, leave in excess of accumulated balances shall be charged as leave without pay.

Should the required documentation ultimately establish that the employee is entitled to certification, then any time off will still be counted against the employee's sick leave balance and, in the absence of an available sick leave balance, the employee's vacation and/or holiday leave balance. However, the time taken will be additionally designated as protected Family and Medical Leave. At any time, the employee may request, in writing, that his/her compensatory time be charged. Otherwise, leave in excess of accumulated balances shall be charged as leave without pay. Upon written request, the County shall furnish the employee with a copy of the examining health care provider's conclusions within seven (7) business days of the employee's written request.

3. Storage of Records Received as a Result of Second and/or Third Examinations

Employee records reflecting any medical information which are received by the County shall be stored by the Personnel Director in the Personnel Department in a file separate from the employee's official personnel file. The Personnel Director is responsible for insuring the confidentiality of the information contained in the employee's medical file.

4. Re-Certification

Under the following circumstances, and solely at the discretion of Fulton County, re-certification of an employee's entitlement to Family and Medical Leave may be required of the employee:

- (A) For pregnancy, chronic, or long-term conditions under the supervision of a health care provider, the County may require re-certification every thirty (30) days unless:
 - (1) The circumstances which originally justified certification have changed significantly (for better or for worse); or
 - (2) The County receives/possesses information which tends to cast doubt upon the employee's stated reasons for the absence(s).

In the event that one or both of the above situations exist, the County reserves the right to require re-certification at any time.

- (B) For any other situations, and as allowed by law, the County may require re-certification under the following circumstances:
 - (1) The employee requests an extension of leave;
 - (2) The circumstances which originally justified certification have changed significantly (for better or for worse);
 - (3) The County receives/possesses information which tends to cast doubt upon the employee's stated reasons for the absence(s).
- (C) Any re-certification documentation shall be furnished by the employee at the employee's expense.
- (D) The employee must submit the re-certification within fifteen (15) days of a written request for such re-certification.
- (E) The County will not require second and/or third examinations to either confirm or refute the opinion of the physician submitting a response to a re-certification request.

METHODS AND AMOUNT OF LEAVE AVAILABLE:

1. Amount of Leave Available as Family and Medical Leave

Depending upon the reason for the leave and conditions, an employee is entitled to a maximum of twelve weeks per year of Family and Medical Leave including any paid and/or unpaid time. A year, as determined by the County, shall be calculated based upon the employee's original date of hire. Effective January 1, 2000, the method utilized to calculate a "year" shall change. Effective January 1, 2000, a year, as determined by the County, shall be the calendar year from January 1 to and through December 31.

For employees who normally work part-time schedules, the amount of leave to which the employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule. For example, if an employee normally works 30 hours per week and, while on Family and Medical leave, then works only 20 hours per week, the employee's 10 hours of leave would constitute 1/3 of a week of FMLA.

2. Concurrent Leave

While on Family and Medical Leave, an employee may be required to exhaust all paid vacation, holiday, and/or sick leave before they go on unpaid leave. The employee may make a written request to utilize accrued compensatory time concurrently and any such request shall be granted. Therefore, the employee may concurrently be on vacation, holiday, sick and/or compensatory leave and Family and Medical Leave.

3. Intermittent Leave

Intermittent leave under the Family and Medical Leave Act is available, when medically required. Intermittent leave is taken in separate blocks of time because of a single qualifying health condition. If this leave is requested as a result of the birth or placement of a child, the Appointing Authority is not required to grant the request.

4. Reduced Leave

A reduced leave schedule under the Family and Medical Leave Act is available, when medically required. Reduced leave may reduce an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a limited period of time, usually from full-time to part-time. If this leave is requested as a result of the birth or placement of a child, the Appointing Authority is not required to grant the request.

5. Calculation of Intermittent and Reduced Leave

Only the amount of leave actually taken will be counted toward an employee's twelve week entitlement. For example, if an employee normally works five days per week and takes one day off, then the employee has utilized 1/5 week of his/her entitlement.

For employees who normally work part-time schedules, the amount of leave to which the employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule. For example, if an employee normally works 30 hours per week and, while on Family and Medical leave, then works only 20 hours per week, the employee's 10 hours of leave would constitute 1/3 of a week of FMLA.

For employees with schedules which vary from week to week, an average of the weekly hours worked over the immediately preceding twelve weeks will be used as the employee's "normal" workweek.

It shall be the responsibility of each Appointing Authority, or his/her designee (such as the departmental payroll clerk), to calculate all Family and Medical Leave, including intermittent and/or reduced leave, taken pursuant to this policy and procedure.

6. Paid or Unpaid Leave

While on Family and Medical Leave, an employee is required to exhaust all paid sick, vacation and/or holiday leave before they may go on unpaid leave. Additionally, the employee may choose to utilize accrued compensatory time and may request use of such time in writing. An Appointing Authority shall grant any and all such requests.

NOTICE REQUIREMENTS:

1. Fulton County

- (A) Fulton County shall provide an employee with written notice of the designation of leave as protected Family and Medical Leave;
- (B) Fulton County shall provide an employee with written instructions regarding the requirements for the employee to furnish medical certification of a serious health condition;
- (C) Fulton County shall provide an employee with notice regarding the consequences of the employee's failure to provide the requested medical certification of a serious health condition;
- (D) Fulton County shall provide an employee with information regarding the County's policy with regard to substitution of paid leave during any time taken pursuant to Family and Medical Leave;
- (E) Fulton County shall provide an employee with notice regarding an employee's responsibility to continue making premium payments to maintain health benefits and shall designate where the employee shall send those payments during the period of Family and Medical Leave;
- (F) Fulton County shall provide an employee with notice, prior to the employee's absence, regarding any departmental requirement that the employee present a fitness for duty certification upon his/her return to work;
- (G) Fulton County shall provide an employee with information regarding the employee's right to restoration to the same or an equivalent job upon his/her return from leave.

2. Employee:

- (A) The employee shall be required to provide his/her Appointing Authority with a minimum of thirty (30) days notice for any Family and Medical Leave which is foreseeable.
- (B) The employee shall be required to provide his/her Appointing Authority with notice of the need for Family and Medical as soon as is practicable when the leave is not foreseeable, ie: within two (2) business days.
- (C) The employee shall be required to return a completed “Certification Form” to the Appointing Authority within fifteen (15) days of receipt of that form

CONTINUATION OF BENEFITS DURING EMPLOYEE’S ABSENCE:

Fulton County shall maintain all of an employee’s benefits under the same terms and conditions as if the employee were not on Family and Medical Leave; provided, however, that it shall be the responsibility of the employee to arrange, through the Finance department, to make his/her regular contributions to his/her health coverage. Should the employee fail to make such contributions, Fulton County reserves the right to “drop” the employee from coverage during his/her leave.

Upon reinstatement, Fulton County shall provide the same level of coverage as prior to the leave with no qualifying periods, physical examinations, or exclusions of pre-existing conditions.

REINSTATEMENT:

If, upon expiration of the employee’s Family and Medical Leave, the employee is able to return to work and perform the essential functions of his/her position, then that employee shall be restored to his/her original position or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

If, upon expiration of the employee’s Family and Medical Leave, the employee is not able to return to work and perform the essential functions of his/her position, then that employee shall have no right to restoration to another position under this policy and procedure. In this situation, the employee may choose to request Leave without Pay, pursuant to PR-1200-11 or to investigate his/her options under the Americans with Disabilities Act by contacting the Office of Disability Affairs; or may be separated without Prejudice pursuant to PR-800-8.

1. Alternative Positions

When an employee needs intermittent leave or a reduced leave schedule the Appointing Authority has the right, at his/her sole discretion, to temporarily transfer the employee to an alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee’s regular position. No employee will be subjected to any reduction of salary as the result of such a temporary reassignment, regardless of

the fact that the alternative duties may potentially differ significantly from the employee's regularly assigned duties.

Upon completion of the employee's need for intermittent leave or a reduced leave schedule, the employee shall be returned to either (i) his/her original position; or (ii) an equivalent position.

2. Return to Work Certification

If the Appointing Authority has a written departmental policy requiring employees returning from periods of illness to provide a return to work clearance, then the Appointing Authority may also require an individual returning from an absence covered by Family and Medical Leave to provide such a clearance.

ADDITIONAL FAMILY AND MEDICAL LEAVE PROVISIONS

Notwithstanding the previous policies and procedures, any employee eligible to accrue leave shall be allowed a maximum of twenty-four (24) hours of vacation and/or holiday leave in a twelve month period to participate in school activities of their child/children where activities are directly related to the educational advancement of their child/children such as parent-teacher conferences, interviewing for a new school, spending a day in a child/children classroom or attending field trips, and/or accompanying an elderly relative to routine medical appointments or other professional services related to their care, such as interviewing nursing homes or group homes. Upon the written request of the employee, compensatory time shall be granted for the above stated reasons. Employees not eligible to accrue leave shall be granted the same maximum of twenty-four (24) hours of leave without pay to accomplish the above.

This twenty-four (24) hour period shall not be accrued towards an employee's previously described twelve week entitlement.

FMLA AND THE AMERICANS WITH DISABILITIES ACT

Employees who are certified as a "qualified individual with a disability" by the Office of Disability Affairs at the time they request Family and Medical Leave are required to send a copy of their Family and Medical Leave Certification Form to the Director of the Office of Disability Affairs within three working days of its submission to the employee's Appointing Authority.

Furthermore, Appointing Authorities who are aware of an employee who is receiving reasonable accommodations as a result of their certification by the Office of Disability Affairs are required to submit all requests for Family and Medical Leave, from that employee, to the Director of the Office of Disability Affairs.

FMLA AND WORKER'S COMPENSATION:

In many situations, an employee who is taking time off as the result of an injury which is compensable under worker's compensation will also be protected by the provisions of the Family and Medical Leave Act.

In these situations, it is the responsibility of the Appointing Authority to determine whether an employee is eligible for protection under the Family and Medical Leave Act and to designate the leave as Family and Medical Leave.

Employees on worker's compensation are entitled to choose to either utilize vacation and/or sick leave or to receive payment from worker's compensation. Workers who have opted for payment from worker's compensation in lieu of utilizing vacation and/or sick leave and who are also on Family and Medical Leave will not be required to utilize their vacation and/or sick leave simultaneously. However, they will still be required exhaust their vacation and/or sick leave once worker's compensation payments end and before they request any leave without pay.

PROHIBITION OF RETALIATION:

Fulton County does not condone, and will not tolerate, any adverse action being taken against an employee because of that employee's exercise or attempt to exercise his/her rights under the Family and Medical Leave Act. No employee of Fulton County will be subjected to any adverse action because of that employee's bona fide opposition to or complaint about any alleged unlawful practice under the FMLA. Finally, no employee will be subjected to any adverse action as a result of giving any information and/or testimony relating to any rights under the Family and Medical Leave Act.

Departmental Sponsor: Personnel Department

Policy Review Date: June 2001

References: Minutes of the Board of Commissioners, May 3, 1999

Departments Affected: All Departments and Offices of Appointed or Elected Officials