

## **Family and Medical Leave**

### **1.0 Policy:**

It is the policy of Bladen County to provide leave according to Family and Medical Leave Act (FMLA) to eligible employees.

### **2.0 Purpose:**

The Family and Medical Leave Act of 1993 was passed by Congress to balance the demands of the workplace with the needs of families, to promote stability and economic security of families, and to promote national interests in preserving family integrity; to minimize the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons; and to promote the goal of equal employment opportunity for women and men.

The National Defense Authorization Act of 2008 (NDAA) amended the Family and Medical Leave Act, effective January 16, 2009, to allow the addition of military family leave entitlements whereby eligible employees may take up to twelve weeks of job-protected leave in the applicable twelve-month period for any “qualifying exigency” (emergency) arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty. The NDAA also amended the Family Medical Leave Act to allow eligible employees to take up to 26 weeks of job-protected leave in a “single twelve-month period” to care for a covered service member with a serious injury or illness. Other unclear areas of the Family and Medical Leave Act were also amended for the purpose of providing clarity to the policy and improving communications between employees, employers and medical providers.

### **3.0 Definitions:**

- A. Parent – a biological or adoptive parent or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child.
- B. Child – a son or daughter who is
  - 1. Under 18 years of age or
  - 2. Is 18 years of age or older and incapable of self-care because of a mental or physical disability.  
and who is:
    - a. A biological child;
    - b. An adopted child;
    - c. A foster child – a child for whom the employee performs the duties of a parent as if it were the employee’s child;
    - d. A step-child – a child of the employee’s spouse from a former marriage;
    - e. A legal ward – a minor child placed by the court under the care of a guardian; or
    - f. A child of an employee standing in loco parentis.
- C. Spouse – a husband or wife recognized by the State of North Carolina.

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- D. Serious Health Condition – an illness, injury, impairment, or physical or mental condition that involves:
1. Inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical facility, including any period of incapacity (defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment for or recovery from), or any subsequent treatment in connection with such impairment; or
  2. Continuing treatment by a health care provider involving one or more of the following:
    - a. A period of incapacity as defined above of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves
      1. Treatment two or more times by health care provider, by a nurse or physician's assistant under the direct supervision of a health care provider, or a provider of health care services (e.g. physical therapist) under orders of, or on referral by a health care provider. The first treatment must take place within the first seven days of incapacity and both within thirty days of the first day of incapacity; or
      2. Treatment of at least one occasion resulting in a regime of continuing treatment under the supervision of the health care provider (course of prescription medication, i.e., antibiotic, or therapy requiring special equipment to alleviate the health condition, i.e., oxygen); or
    - b. Any period of incapacity due to pregnancy or for prenatal care, even when the employee or family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than three days (prenatal examination, severe morning sickness): or
    - c. Any period of incapacity or treatment due to a "chronic serious health condition," even when the employee or family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than three days, which is defined as one:
      1. Requiring periodic visits or treatment by a health care provider, or by a nurse or physician's assistant under the direct supervision of a health care provider;
      2. Continuing over an extended period of time (including recurring episodes of a single underlying condition); and
      3. That may cause episodic rather than continuing period(s) of incapacity (e.g. asthma, diabetes, epilepsy, etc.).
    - d. Incapacity for a permanent or long-term condition for which treatment may not be effective (Alzheimer's, a severe stroke or terminal stages of a disease).

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- e. Multiple treatments for restorative surgery or incapacity for serious conditions that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment (chemotherapy, radiation, dialysis, etc.).

(Advisory Note: Treatment includes, but is not limited to, examination to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examination, eye examination, or dental examination. Ordinarily, unless complications arise, the following are examples of conditions that do not meet the definition: common cold, flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, cosmetic treatment, etc.)

The following may meet the definition if all other conditions of this section are met: restorative dental or plastic surgery after an injury or removal of cancerous growths, mental illness, allergies, treatment for substance abuse.

#### **E. Health Care Provider**

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery in the State of North Carolina; or
2. Any other person determined by statute, credential, or licensure to be capable of providing health care services which include:
  - a. Podiatrists
  - b. Dentists
  - c. Clinical psychologists
  - d. Optometrists
  - e. Chiropractors (limited to manual manipulation of spine to correct subluxation shown on radiographs).
  - f. Nurse practitioners
  - g. Nurse midwives
  - h. Clinical social workers
  - i. Christian Science practitioners listed with First Church of Christ, Scientists in Boston, MA (Note: In this situation, the employee cannot object to an agency requirement to obtain a second or third certification other than Christian Science practitioner.)
  - j. Health care providers from whom state approved group and HMO health plans will accept certification of serious health condition to substantiate a claim for benefits.
  - k. Foreign health care provider in above stated areas who are authorized to practice in the country and who are performing within the scope of the laws.

F. Workweek – The number of hours an employee is regularly scheduled to work each week.

G. Reduced Work Schedule – A work schedule involving fewer hours than an employee is regularly scheduled to work.

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- H. Intermittent Work Schedule – A work schedule in which an employee works on an irregular basis and is taking leave in separate blocks of time, rather than for one continuous period of time, usually to accommodate some form of regularly scheduled medical treatment.
- I. Month Period - The 12-month period measured forward from the date any employee’s first family and medical leave begins.
- J. Military Caregiver Leave – A covered employer must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness up to a total of 26 workweeks of unpaid leave during a “single 12-month period” to care for the service member.
- K. Service Member- Is a current member of the Armed Forces, including a member of the National Guard or Reserves, who 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.
- L. Serious Injury or Illness – One that is incurred by a service member in the line of duty, on active duty, that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.
- M. Qualifying Exigency Leave – A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave during the normal 12-month period established by the employer for the Family and Medical Leave Act leave for qualifying exigencies arising out of the fact that the employee’s spouse, son, daughter or parent is on active duty or has been notified of an impending call or order to active duty. Qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves; it does not extend to family members of military members in the Regular Armed Forces.

#### **4.0 Eligible Employee**

- A. Determining Eligibility – An employee’s eligibility for Family/Medical Leave shall be made based on the employee’s months of service and hours of work; as of the date leave is to commence. While the 12 months of employment need not be consecutive, employment periods prior to a break in service of seven years or more need not be counted unless the break is caused by the employee’s fulfillment of his or her National Guard or Reserve military obligation.
- B. Regular, General, Career Status, Probationary, Trainee, and Part-time – an employee who has been employed with Bladen County for at least 12 months and who has been in pay status at least 1,250 hours during the previous 12-month period is entitled to a total of 12 workweeks, paid or unpaid, leave during any 12 month period for one or more of the reasons listed below.
  - 1. For the birth of a child and to care for the newborn child after following birth.
  - 2. For the placement of or to care for a child placed with the employee for adoption or foster care, provided the leave is taken within a 12-month period following adoption; (FMLA

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must also be granted before the actual placement or adoption of a child if an absence from work is required for the placement, for adoption or foster care to proceed).

3. For the employee to care for the employee's child, spouse, or parent, while that child, spouse, or parent has a serious health condition; or
4. Because the employee has a serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position.
5. For an employee whose spouse, child of any age or parent is a military service member under a call or order to federal active duty in support of a contingency operation. Qualifying exigency leave is designed to provide employees an opportunity to address issues which arise when a family member is called to active duty.
6. For employees who must care for a family member who has been injured or became ill while serving in the armed forces.

Leave without pay beyond the 12-week period and leave for employees not covered under the Family and Medical Leave Policy shall be administered under the Leave Without Pay Policy. Under these provisions, employees must pay for health benefits coverage. Separation due to unavailability after all leave has been exhausted may apply in some cases and shall be administered in accordance with the rules of the State Personnel Commission.

- C. Temporary Employees – This policy does not cover temporary employees since the maximum length of a temporary appointment is one year.

#### **5.0 Leave Charges**

- A. Period of paid leave and periods of leave without pay (including leave without pay while drawing short-term disability benefits) count towards the 12 workweeks to which the employee is entitled.
- B. For purposes of determining the amount of leave used by the employee, the fact that a holiday(s) may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave.
- C. Workers' Compensation Leave – If an employee is out on workers' compensation drawing temporary total disability, the time away from work is considered as a part of the FMLA 12 week entitlement and will run concurrently. Workers' Compensation leave is considered a paid leave, rather than unpaid leave, although the employee is usually paid 2/3 of his/her regular wage.
- D. Compensatory Leave - Effective January 16, 2009, the County shall require an employee to use FLSA compensatory time concurrently with FMLA leave.
- E. Employee Options – The employee has the following options for charging leave:

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1. Birth – For the birth of a child, the employee may choose to exhaust available vacation and/or sick leave, or any portion or go on leave without pay; except that sick leave may be used only during the period of disability. This applies to both parents. Please see Sick Leave Policy for additional information/clarification.
2. Adoption – For the adoption of a child, the employee may choose to exhaust a maximum of 30 days sick leave, available vacation leave, or any portion, or go on leave without pay.
3. Illness of Child, Spouse, Parent – For the illness of an employee’s child, spouse, or parent, the employee may choose to exhaust available sick and/or vacation leave, or any portion, or go on leave without pay.
4. Employee’s Illness – For the employee’s illness, the employee shall exhaust available sick leave and may choose to exhaust available vacation leave, or any portion, before going on leave without pay. If the illness extends beyond the waiting period required for an employee’s individual short-term disability, the employee may exhaust the balance of available leave and simultaneously draw their short-term disability benefits.

#### **6.0 Intermittent Leave or Reduced Work Schedule**

- A. Pursuant to this policy, the employee may not take leave intermittently or on a reduced work schedule for child birth and birth related child care or for adoption unless the employee and the County agree otherwise; however, when medically necessary, the employee may take leave intermittently or on a reduced scheduled to care for the employee’s child, spouse, or parent who has a serious health condition, or because the employee has a serious health condition.
- B. There is no minimum limitation on the amount of leave intermittently; however, the County may not require leave to be taken in increments of more than one hour.
- C. If such leave is foreseeable, based on planned medical treatment, the County may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring period of leave.
- D. Only the time actually taken as leave may be counted toward the 12 weeks of leave to which the employee is entitled when leave is taken intermittently or on a reduced leave schedule. (For example, an employee normally works 40 hours each week. The employee is on a reduced work schedule of 20 hours per week. The FMLA leave may continue for up to 24 calendar weeks.)
- E. If an employee works a reduced or intermittent work schedule and does not use paid leave to make up the difference between the normal work schedule and the new temporary schedule to bring the number of hours worked up to the regular schedule, the employee will earn leave at a reduced rate.

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### **7.0 Bladen County Responsibility**

A. *Notification of FMLA Provisions* – In addition to the posting requirement outlined in posting section, the County shall include the FMLA provisions in written publications, such as policy manual. In addition, each time an employee provides notice of the need for FMLA leave, the County shall provide the employee with written notice detailing the specific expectation and obligations of the employee.

B. *Notice of Eligibility and Rights and Responsibilities*

Employees of the County will be required to provide a formal request for the need for FMLA leave. Once management has received the request, it will be forwarded to the HR Director. The employee will be notified that he/she is eligible for FMLA leave within five business days after receiving a request for FMLA leave or within five days of acquiring knowledge that an employee is absent for an FMLA-qualifying reason. The notice will be in writing and in those cases where the employee is not eligible, he/she will be provided the reasons for the ineligibility.

When an employee is on paid leave but has not given notice of the need for FMLA leave, the County shall, after a period of ten (10) workdays, request that the employee provide sufficient information to establish whether the leave is for a FMLA-qualifying reason. This does not preclude the County from requesting the information sooner, or at any time an extension is requested. If an absence, which begins as other than FMLA, later develops into an FMLA qualifying absence, the entire portion of the leave period that qualifies under FMLA may be counted as FMLA. Leave may be designated as FMLA leave retroactively.

If an employee is out for a reason that qualifies for FMLA leave and the agency does not learn of the reason for the leave until the employee returns to work, the agency may designate the leave as FMLA leave within two regular business days of the employee's return.

Employees shall be provided a Notice of Eligibility and Rights and Responsibilities (US DOL Form WH 381) documenting the receipt of the employee request for FMLA, the purpose of the request and the designation of eligibility. In situations where the employee does not meet eligibility requirements, the County will provide reasons for the employee's ineligibility.

At the same time that the County notifies the employee that he/she is eligible for FMLA leave, it must also give the employee a notice that details the specific rights and the specific expectations and obligations of the employee on FMLA leave. The rights and responsibilities notice must also include the following information:

- Whether the employee must provide a medical certification;
- Whether the leave will count against the employee's 12-week FMLA entitlement;
- Whether the County requires the use of accrued paid leave in lieu of unpaid leave;
- That the employee may elect to use accrued paid leave in place of unpaid leave and any conditions related to the substitution of paid leave for unpaid leave;
- Whether the employee needs to make contributions toward health insurance premium payments and, if so, what arrangements the employee needs to make, as well as the consequences of a failure to make contribution payments;

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- That the employee is liable for reimbursing the County for health insurance contributions if the employee fails to return to work upon the conclusion of FMLA leave;
- Whether the employee is a “key employee” of the County and the reasons why restoration may be denied upon the conclusion of FMLA leave;
- That the employee has the right to return to the same or an equivalent job.
- Whether the employee must provide periodic updates on his/her condition during the period of FMLA leave;
- Whether the employee must provide a fitness-for-duty certification before returning to work.

#### **C. *Medical Certifications***

The County must allow the employee fifteen calendar days to obtain a medical certification from the medical provider(s). If the employee does not return the certification within the 15-day period, the employee loses his/her right to FMLA and to return to the same or substantially equivalent position. It will not be a violation of the Family Medical Leave Act to either deny FMLA or to terminate an employee who has not returned a medical certification within 15 days. The County is entitled to a complete and sufficient certification. If for some reason the certification is incomplete or insufficient, the employee will be notified that he/she will have seven additional, calendar days in which to provide the required information. FMLA leave may be denied to any employee requesting leave who fails to return a medical certification or who fails to return a complete and sufficient certification after being given seven days to resubmit it. In accordance with the Department of Labor and HIPAA regulations, the County representative may directly contact a medical provider for clarification in regard to information useful in the determination of a serious health condition. The representative may be a health care provider representative, a human resources specialist, a leave administrator or management official. Under no circumstances, may the immediate supervisor contact the medical provider.

At the time the County requests certification, it shall advise the employee of the anticipated consequences of an employee’s failure to provide adequate certification. The County shall provide the employee a reasonable opportunity to correct any incomplete information. If the employee uses paid sick leave, the County shall require the employee to provide a medical certification as specified in Bladen County Sick Leave Policy and not the more stringent FMLA medical certification.

If the County has reason to doubt the validity of a medical certification, it may require the employee to obtain a second opinion at the County’s expense. Pending receipt of the second (or third) opinion, the employee may be placed on FMLA retroactively. If the certifications do not ultimately establish the employee’s entitlement to FMLA leave, the leave shall not be designated as FMLA leave. The County may request the health care provider to furnish the second opinion but the selected health care provider may not be employed on a regular basis by the County.

If the opinions differ, of the employee and the County designated health care providers, the County may require the employee to obtain certification from a third health care provider, again at the County’s expense. This third opinion shall be final and binding. The third health care provider may be designated or approved jointly by the County and the employee.

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The County shall reimburse an employee or family member for reasonable “out of pocket” travel expenses incurred to obtain the second and third medical opinions. The County may not require the employee or family member to travel outside normal commuting distance except in very unusual circumstances.

The County shall provide the employee, within two business days, with a copy of the second and third medical opinions, where applicable, upon request by the employee.

For Medical Certifications use the US DOL WH-380E – Certification of Health Care Provider for Employee’s Serious Health Condition for all employees who have a serious health condition. A list of essential functions or a completed, accurate description for the position the employee occupies will be attached to the medical certification for the purpose of assisting the medical provider in understanding the expectations and essential functions required of the employee.

The US DOL H-380-F – Certification of Health Care Provider for Family Member’s Serious Health Condition form will be utilized for certifying a serious health condition of an employee’s family member.

### *D. Notice and Designation Requirements*

Once the County has received a completed medical certification form, or otherwise has acquired enough knowledge to determine whether the employee is entitled to FMLA leave, the employer must give the employee a separate Designation Notice advising the employee that the leave is being designated FMLA leave within five business days. Regardless of whether the information was included in the eligibility and rights and responsibilities notice, the County will include the following information in the designation notice:

- Whether accrued paid leave will be substituted for unpaid leave;
- Whether the employee must provide a fitness-for-duty certification before returning to work;
- A list of the employee’s essential job functions, if the fitness-for-duty certification must address the employee’s ability to perform essential job functions; and
- Notice of the amount of leave that will be counted against the employee’s FMLA entitlement.

US DOL Form WH-382 may be utilized for the Designation Notice

### *E. Re-certification of Medical Conditions*

1. The County may request recertification no more often than 30 days unless: (a) an extension is requested, (b) circumstances described by the previous certification have changed significantly or (c) the County receives information that casts doubt upon the employee’s stated reason for the absence.
2. If the minimum duration specified on a certification is more than 30 days, the County may not request recertification until that minimum duration has passed.
3. The employee must provide the requested recertification to the County within the time frame requested by the agency (which must allow at least 15 calendar days after the agency’s request), unless it is not practicable under the particular circumstances.

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4. Any re-certification requested by the County shall be at the employees' expense unless the County provides otherwise. No second or third opinion on re-certification may be required.

### **8.0 Employee/Supervisor Responsibility**

- A. Notice – The employee shall give notice to the supervisor for leave requested under this policy. The employee must explain the reasons for the needed leave in order to allow the County Human Resources Director to determine that the leave qualifies under the Act. The department head or supervisor shall immediately notify the Human Resources Office and refer the employee to the Human Resources Office, which will manage the FMLA process.
  1. Birth or Adoption – The employee shall give the County no less than 30 days notice, in writing, of the intention to take leave, subject to the actual date of the birth or adoption. If the date of the birth or adoption requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable, which becomes known to the employee.
  2. Planned Medical Treatment – When the necessity for leave to care for the employee's child, spouse or parent or because the employee has a serious health condition, the employee must give 30 day's notice if practicable of the intention to take leave. For planned medical treatment, employee consultation with the supervisor prior to the request for FMLA leave is mandatory.
  3. Medical Emergency – In the case of a medical emergency requiring leave because of an employee's own serious health condition or to care for a family member with a serious health condition, the County shall not require written advance notice.
- B. If the employee will not return to work after the period of leave, the employee shall notify the County in writing. Failure to report at the expiration of the leave, unless an extension has been requested, may be considered as a resignation.

### **9.0 Qualifying Exigency Leave Under the FMLA**

The FMLA requires the County to grant up to twelve weeks of leave for certain qualifying exigencies to employees whose spouse, child of any age or parent is a military service member under a call or order to federal active duty in support of a contingency operation. This form of FMLA is defined as qualifying exigency leave. Qualifying exigency leave is designed to give employees time to deal with some of the informational, financial and child-related issues that arise when a family member is called to or on active duty.

The US Department of Labor defines qualifying exigency as:

- Deployment or a service member with seven or fewer days notice;
- Military ceremonies and events, as well as support, family-assistance or informational programs related to a service member's active duty or call to active duty status;
- Providing urgent, immediate childcare or arranging for alternative childcare for the children of service members on or called to active duty;

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- Attending school or daycare meetings relating to the child of an service member on or called to active duty;
- Making financial or legal arrangements related to a service member's active duty status or call to active duty;
- Post-deployment activities for a period ninety days after the termination of the service member's active duty status.

Qualifying exigency leave is limited to situations in which a call or order to active duty status is in support of a contingency operation. The active duty orders of a service member will generally state whether he/she is serving in support of a contingency operation.

Qualifying exigency leave applies only to the family members of those serving in Reserve components of the armed forces, the National Guard and certain retired members of the regular armed forces and the retired reserve.

Qualifying exigency leave does not apply to family members of the regular armed forces on active duty status. Qualifying exigency leave may be taken on an intermittent or reduced schedule. Notice of the need for qualifying exigency leave must be "as soon as practicable".

#### **10.0 Certification for Qualifying Exigency Leave**

The County shall require employees requesting qualifying exigency leave to provide:

- A copy of the military member's active duty orders or other documentation issued by the military indicating that the military member is on or called to active duty in support of a contingency operation and the dates of active duty service, **and**
- A certification from the employee setting forth facts supporting the employee's need for leave in this situation, the approximate starting date on which the qualifying exigency began or will begin, the beginning and ending dates of the absence for which the employee is requesting FMLA qualifying exigency leave and if the employee is meeting with a third-party, identifying and contact information for the third party and a description of the meeting's purpose.

The County shall not request re-certification of the covered service member's active duty or call to active duty orders. The County shall request certification of the need for qualified exigency leave and shall request the certification in writing within five days of the request for or beginning of leave and the certification must be completed and returned within fifteen days of its receipt from the County.

The US DOL Form WH-384 will be required to request a certification of qualifying exigency for military family leave.

#### **11.0 Military Caregiver Leave Under the FMLA**

FMLA-eligible employees may take up to 26 weeks of leave within a twelve-month period to care for a family member who has been injured or become ill while serving in the armed forces. Employees may take military caregiver leave to care for current member of:

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- Regular Armed Forces in contrast to qualifying exigency leave where current members of the regular Armed Forces are not include as “covered service members”.
- National Guard or Reserves
- Regular Armed Forces or National Guard or Reserves who are on the temporary disability retired list,

Who have a serious injury or illness incurred in the line of duty on active duty that renders them medically unfit to perform the duties of his/her office, grade or rating, and for which the service member is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is otherwise on the temporary disability retired list.

The spouse, “son or daughter of a covered service member,” “parent of a covered service member” or “next of kin of a covered service member” may take military caregiver leave under the FMLA.

The County shall require an employee to give notice of the need for military caregiver leave:

- 30-days in advance, when the need for military caregiver leave is foreseeable.
- Either the same day or the next business day, when the need for military caregiver leave was not foreseeable.

The County may ask an employee requesting military caregiver leave to provide a medical certification of the need for leave from the healthcare provider of the service member. For the purpose of military caregiver leave, the health care providers who may complete the certification include Department of Defense providers, Department of Veterans Affairs providers, TRICARE network authorized private providers and non-network TRICARE authorized private providers. A medical certification for military caregiver leave may request information sufficient to establish the employee’s need for leave, including the following information:

- A statement of medical facts regarding the service member’s health condition—specifically, facts relating to whether the injury or illness render the service member medically unfit to perform the duties of his or her military office, grade, rank or rating and whether the member is receiving medical treatment, recuperation or therapy;
- Information sufficient to establish that the service member is in need of care;
- A description of the care to be provided to the service member and an estimate of the leave needed to provide the care; and
- The relationship of the employee to the service member.

Certification of the need for military caregiver leave is subject to the same time requirements as FMLA leave. The County must request the certification in writing within five days of the request for or beginning of leave and the certification must be completed and returned within fifteen days of its receipt from the employer. Because military caregiver leave differs from FMLA leave to care for a family member with a serious health condition, the County will not use the same certification form for traditional FMLA leave and military caregiver leave. US DOL Form WH-385 will be utilized for requests of military caregiver leave.

Like FMLA leave requests, the timing requirements for certification of the need for military caregiver leave are the same, fifteen calendar days after receiving the form from the county. For

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military caregiver leave, second and third opinions in addition to re-certification are not permitted. The County shall accept an “invitational travel order” or “invitational travel authorization” issued to a family member to join an ill or injured service member at his or her bedside in lieu of the Form WH-385.

The employee is eligible for 26 weeks of leave to care for the service member during a single twelve-month period. Employee is also entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason in a year in which she or he takes military caregiver leave. The single twelve-month period begins the first day the employee takes military caregiver leave and ends twelve months later; regardless of the method that the County uses to determine FMLA entitlement for other forms of FMLA leave. Military caregiver leave may be taken on an intermittent or reduced leave schedule.

### **12.0 Employment and Benefits Protection**

- A. Reinstatement – The employee shall be reinstated to the same position held when the leave began or one of the like pay grade, pay, benefits, and other conditions of employment. The County shall require the employee to report at reasonable intervals to the County on the employee’s status and intention to return to work. The County also shall require that the employee provide certification that the employee is able to return to work.
- B. Benefits – The employee shall be reinstated without loss of benefits accrued when the leave began. All benefits accrue during any period of paid leave; however, no benefits will be accrued during any period of leave without pay.
- C. Health Benefits – The County shall maintain coverage for the employee under the agency plan for the duration of leave at the level and under the conditions coverage would have been provided if the employee had continued employment. Any health plan premiums that an employee paid prior to leave must continue to be paid by the employee during the leave period (e.g., dependent health coverage). The County must give advance written notice to employees of the terms for payment of premiums during FMLA leave. The obligation to maintain health insurance coverage stops if an employee’s premium payment is more than 30 days late. The County must provide 15 days notice that coverage will cease.

The County may recover the premiums if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee’s control.

### **13.0 Interference with Rights**

- A. Actions prohibited – It is unlawful to interfere with, restrain, or deny any right provided by this policy or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this policy.
- B. Protected Activity – It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following.

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1. Files any civil action, or institutes or causes to be instituted any civil proceeding under or related to this policy.
2. Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this policy.
3. Testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this policy.

#### **14.0 Enforcement**

A violation of or denial of leave requested pursuant to the Family and Medical Leave Act of 1993 is a contested case and creates a right of grievance or appeal for County employees subject to the State Personnel Act. Violations can result in any of the following or a combination of any of the following and are enforced by the U.S. Secretary of Labor.

- a. U.S. Department of Labor investigation, or
- b. Civil liability with the imposition of court cost and attorney's fees, or
- c. Administrative action by the U. S. Department of Labor

#### **15.0 Posting Requirement**

The County shall post, in a conspicuous place, a notice explaining the FMLA provision and providing information concerning the procedures for filing complaints of violations of the Act with the U. S. Department of Labor, Wage and Hour Division.

Employers must post US DOL WH Publication 1420, which explains rights and responsibilities under the FMLA in a place conspicuous to all employees and applicants. Electronic posting is permitted, provided that all employees and applicants have access to it. Information may be posted on the agency website, however, a hard-copy is also available whereby applicants have access to viewing the information. The Department of Labor may fine any employer, including the County, who fails to post this notice.

#### **16.0 Record Keeping Requirements**

The County shall keep records for no less than three years and make them available to the Department of Labor upon request.

In addition to the records required by the Fair Labor Standards Act, Bladen County shall keep records of:

- Dates FMLA leave is taken,
- Hours of leave if less than a full day,
- Copies of employee notices,
- Documents describing employee benefits,
- Premium payments of employee benefits, and
- Records of any disputes.

### **Family and Medical Leave**

Records and documents relating to medical certifications, recertifications, or medical histories of employees or employee's family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if ADA is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements, except that:

1. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;
2. First aid and safety personnel may be informed (when appropriate) if the employee's physical or medical condition might require emergency treatment; and
3. Government officials investigating compliance with FMLA (or other pertinent law) shall be provided relevant information upon request.