



WASHOE COUNTY

Family and Medical Leave Policy

I. Policy

- A. Eligibility Effective: 10/02/2017
- B. Types of Leave Covered Last Updated: 04/28/2020
- C. Definition of a Serious Health Condition
- D. Tracking FMLA Leave Responsible County Office: (HR)
- E. Intermittent Leave
- F. Substitution of Paid Leave

II. FMLA Process

- A. Notice Policy Contact:
Human Resources
775-328-2081
- B. Application
- C. Notice of Eligibility
- D. Certification Additional Contacts – Department HR
Representative
- E. Designation Notice
- F. Extension of Leave and Return to Work
- G. Recertification

III. Employee Protections

- A. Health Benefits
- B. Job Restoration
- C. Compensation during Leave
- D. Privacy of Medical Information
- E. Interference with FMLA Leave is Prohibited

ADDITIONAL DETAILS: FMLA At-A-Glance

Forms:

- Application for FMLA Leave
- Notice of Eligibility and Rights and Responsibilities
- Release of Health Information
- Certifications
 - Employee's Serious Health Condition
 - Family Member's Serious Health Condition
 - Qualifying Exigency for Military
 - Injury or Serious Illness of Service Member or Veteran
- Designation Notice
- Release to Return to Work

I. Policy

Washoe County will provide up to 12 weeks of family and medical leave (FMLA) in any 12 month period to eligible employees for reasons related to family and medical care and qualifying military exigency. Washoe County will provide up to 26 weeks of leave for eligible military caregivers.¹

A. Eligibility - To be eligible for leave, an employee must have:

1. *Worked for 12 months* - An employee must have worked at least 12 months for Washoe County. The 12 months need not be continuous or consecutive – all time worked for Washoe County is counted. The only exception is if the employee has a break in service of 7 years or more, in which case the time worked prior to the break is not counted. 29 C.F.R. §825.110.
2. *Worked for 1250 hours* - An employee must have worked at least 1,250 hours in the 12 months immediately preceding the beginning of the leave for Washoe County. The employee's individual record of hours worked will be used to determine whether 1,250 hours have been worked in the 12 months prior to the commencement of FMLA leave. Paid leave and unpaid leave, including FMLA leave, are not included in calculating the hours worked. 29 C.F.R §825.110.

B. Types of Leave Covered

1. *Parenting and Bonding Leave.* 29 C.F.R. §825.112(a)(1)-(2)
 - a. Leave is available for the birth of the employee's child and to care for the newborn child after birth, or placement of a child with the employee for adoption or foster care and to care for the child. 29 C.F.R. §825.112(a)(1)-(2); 29 C.F.R. §825.121; Department of Labor Fact Sheets #28F and #28G.
 - b. Leave must occur within the first year after the event. 29 C.F.R. §825.120(2).
 - c. If both parents are employed by the County, leave is limited to a combined total of 12 workweeks during a “rolling” 12-month period measured backward from the date an employee uses any FMLA leave. 29 C.F.R. §825.120(3).
 - d. Leave may be granted on a continual or intermittent basis. A reduced schedule may be available if medically necessary. 29 C.F.R. §825.120(5)(b).

¹ This policy is a summary of the Family Medical Leave Act (FMLA) 29 U.S.C §§2601-2654, the Code of Federal Regulations 29 C.F.R. §§825.100-825.800, and the National Defense Authorization Act of 2010. Washoe County shall provide FMLA leave in accordance with the law. This policy is not meant to be an exhaustive statement of the County's or its employees' rights and duties.

2. *For a serious health condition that makes the employee unable to perform the essential job functions.* 29 C.F.R. §825.113; 29 C.F.R. §825.112(a)(5)

a. Medical certification is required. Employee is required to provide a completed “Certification of Health Care Provider for Employee’s Serious Medical Condition” form. 29 C.F.R. §825.305.

b. Certification required within 15 days of the request unless there is a reasonable explanation for the delay. Failure to provide certification may result in a denial or delay of leave. 29 C.F.R. §825.305(b).

c. Leave may be granted on a continual or intermittent basis. A reduced schedule may be available if medically necessary. 29 C.F.R. §825.202.

3. *To care for the employee’s spouse, child, or parent with a serious health condition.* 29 C.F.R. §825.112(a)(3).

a. Medical certification is required. Employee is required to provide a completed “Certification of Health Care Provider for Family Member’s Serious Medical Condition” form. 29 C.F.R. §825.305.

b. Certification required within 15 days of the request unless there is a reasonable explanation for the delay. Failure to provide certification may result in a denial or delay of leave. 29 C.F.R. §825.305(b).

c. Leave may be granted on a continual or intermittent basis. A reduced schedule may be available if medically necessary. 25 C.F.R. §825.202.

d. Child includes biological, adopted, stepchild, foster child, legal ward, or a child of a person standing in loco parentis. The definition of child is limited to children under the age of 18 or children who are incapable of self-care because of a mental or physical condition. 29 U.S.C §2612(a)(1); 29 U.S.C. §2611(12); Department of Labor Fact Sheet #28K.

e. Parent includes biological or adoptive parent or a person who stood “in loco parentis” when the employee was a child. “In Loco Parentis” means a person with the day-to-day responsibilities to care for and provide financial support to a child, and need not have a biological or legal relationship. Parent does not include “in-laws”. 29 C.F.R. §825.122(d)(3).

f. If both parents are employed by Washoe County, leave to care for the family member is limited to a combined total of 12 workweeks during a “rolling” 12-month period measured backward from the date an employee uses any leave. 29 C.F.R. §825.201(b).

4. *For any qualifying exigency related to the foreign deployment of a military member who is the employee's spouse, child or parent.* 29 C.F.R. §825.126.

a. Certification of the qualifying exigency is required. Employee is required to provide a completed "Certification of Qualifying Exigency for Military Family Leave" form. 29 C.F.R. §825.309.

b. Certification required within 15 days of the request unless there is a reasonable explanation for the delay. Failure to provide certification may result in a denial or delay of leave. 29 C.F.R. §825.126.

c. The qualifying exigency must be one of the following: (i) short-notice deployment, (ii) military events and activities, (iii) child care and school activities, (iv) financial and legal arrangements, (v) counseling, (vi) rest and recuperation, (vii) post-deployment activities and (viii) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave. 29 C.F.R. §825.126.

5. *Military Caregiver Leave.* An employee eligible for FMLA may take up to 26 workweeks of unpaid leave during a "single 12-month period" to care for a covered service member with a serious injury or illness. 29 CFR §825.127.

a. Medical certification is required. Employee is required to provide a completed "Certification for Serious Injury or Illness of Covered Service Member" form. 29 C.F.R. §825.310.

b. Certification required within 15 days of the request unless there is a reasonable explanation for the delay. Failure to provide certification may result in a denial or delay of leave. 29 C.F.R. §825.310(f).

c. A "covered service member" means a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or is in outpatient status or is on the temporary disability retired list for a serious injury or illness. 29 U.S.C. §2611(15); 29 C.F.R. §825.122(a).

d. Leave may be available to care for a "covered veteran." 29 C.F.R. §825.122(a).

e. To be eligible for military caregiver leave, an employee must be the spouse, parent, child or next of kin of a covered service member or covered veteran. 29 C.F.R. §825.122.

f. The County may request documentation for confirmation of family relationship. 29 C.F.R. §825.122(k).

g. The “single 12-month period” begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date. 29 C.F.R. §825.127(e).

h. Leave taken for any FMLA reason counts towards the 26 week entitlement. 29 C.F.R. §825.127(e)(3).

i. Leave does not carry forward. If an employee does not take all of 26 workweeks of leave entitlement to care for a covered service member during the “single 12-month period,” the remaining part of the 26 work weeks of leave entitlement to care for the covered service member is forfeited. 29 C.F.R. §825.127(e)(1).

C. Definition of a Serious Health Condition - A “serious health condition” means an illness, injury, impairment or physical or mental condition that involves one of the following:

1. *Inpatient care:* Any period of incapacity or treatment connected with inpatient care (i.e. an overnight stay) in a hospital, hospice or residential medical care facility including any period of incapacity, treatment, or recovery. 29 C.F.R. §825.114.
2. *Pregnancy:* Any period of incapacity due to pregnancy, prenatal care, or childbirth. 29 C.F.R. 825.115(b); 29 C.F.R. §825.120.
3. *Chronic Conditions Requiring Treatments:* Any period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatments by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity. 29 C.F.R. §825.115(c).
4. *Permanent/Long-term Conditions Requiring Supervision:* A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease. 29 C.F.R. §825.115(d).
5. *Multiple Treatments:* Any period of absence to receive multiple treatments, including recovery, by a health care provider. 29 C.F.R. §825.115(e)
6. *Serious injury or illness of a service member.* 29 C.F.R. §825.122

**** Examples of a serious health condition may include, but are not limited to:**

- Heart attacks or heart conditions requiring bypass surgery
- Most cancers
- Back conditions requiring extensive therapy or surgery
- Pneumonia
- Severe arthritis
- Severe nervous disorders

- Pregnancy, miscarriages, complications or illnesses related to pregnancy (e.g., severe morning sickness) and need for prenatal care
- Childbirth and recovery from childbirth
- A parent or spouse suffering from Alzheimer’s disease or clinical depression

**** Examples of what is NOT a serious health condition** are short-term conditions requiring only brief treatment and recovery. Excluding serious complications, examples include:

- The common cold
- The flu, earaches, upset stomach, minor ulcers
- Headaches, other than migraines
- Routine dental or orthodontia problems and periodontal disease
- Voluntary or cosmetic treatments

**** Substance Abuse Treatment** that meets the conditions of a “serious health condition” may qualify as FMLA Leave. Absence because of the employee’s use of a substance or alcohol, rather than for treatment, does not qualify for FMLA leave. 29 C.F.R. §825.119.

D. Tracking FMLA Leave

1. *Rolling 12 month period for FMLA* - An employee is eligible to take up to 12 weeks of leave under this policy during any 12-month period. 29 C.F.R. §825.200(b)(4).

- a. The “rolling” 12-month period will be measured backward from the date an employee uses any FMLA leave. 29 C.F.R. §825.200(b)(4).
- b. Each time an employee takes leave, the amount of leave taken will be subtracted from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time. Example, an employee took 8 weeks leave beginning on March 1, 2016. The employee has 4 weeks of leave left through March 1, 2017. 29 C.F.R. §825.200(b).

2. *Single 12 month period for Military Caregiver Leave*

- a. Eligible employees may take up to 26 weeks of leave to care for a covered service member or veteran. 29 C.F.R. §825.200(f).
- b. This 12- month period begins on the first day the employee takes FMLA to care for a covered service member and ends 12 months later regardless of the 12-month period established by the County for other FMLA reasons. 29 C.F.R. §825.200(f); Department of Labor Fact Sheet #28M(a).
- c. Military care leave does not carry forward . If an employee does not take all of 26 workweeks of leave entitlement to care for a covered service member during the “single 12-month period,” the remaining part of the 26 work weeks of leave

entitlement to care for the covered service member is forfeited. 29 C.F.R. §825.127(e)(1).

E. Intermittent Leave or Reduced Leave Schedule

1. FMLA leave may be taken on an intermittent or part-time basis or an employee may work reduced hours. 29 C.F.R. §825.202.

2. Intermittent leave is contingent upon medical necessity and employer approval. 29 C.F.R. §825.202.

3. Intermittent Leave may be used for:

a. *Birth or Placement of Child*: This requires approval by the County. 29 C.F.R. §825.202(c).

b. *Medical Necessity*: Intermittent leave to care for a seriously ill family member or because of the employee's own serious health condition may be taken when medically necessary. Completed Certification Form is required. 29 C.F.R. §825.202(b).

c. *Qualifying Exigency*. Completed Certification Form is required. 29 C.F.R. §825.202(d).

3. The County may place the employee in an alternative position that has equivalent pay and benefits which better accommodates intermittent leave. 29 C.F.R §825.204.

F. Substitution of Paid Leave

1. The employee will be required to use all but 10 days of any accrued annual, compensatory time, sick or personal leave, in lieu of unpaid leave time for any FMLA-qualifying purpose. An employee may not refuse to have the County designate their qualified leave as FMLA time. This requirement may be modified on an "as needed", cases by case basis by approval of Human Resources. 29 C.F.R. §825.207(a)-(c); 29 C.F.R. §825.207(g).

2. Use of accrued sick leave is limited by the County's policy governing the use of sick leave.

3. Leave for conditions covered under worker's compensation shall also be designated as FMLA leave when the condition meets FMLA requirements.

II. FMLA PROCESS

A. Notice

1. By employee: Employees must comply with their department's usual and customary requirements for requesting leave and provide enough information to Human Resources Representative to reasonably determine whether the FMLA may apply to the leave request. 29 C.F.R. §825.302(d).

a. *Foreseeable Leave:* When the need for the leave is foreseeable, the employee must give written notice to the Human Resources Department at least 30 days prior to the date on which leave is to begin. A reasonable effort should be made to schedule leave so as to not unduly disrupt the department's operations. 29 C.F.R. §825.302(a).

b. *Emergency Leave:* If 30 days' notice cannot be given, the employee is required to give as much notice as practicable. Emergency FMLA leave may be approved based on verbal or email communication with the department head, and the required documentation may be completed after the FMLA leave begins. 29 C.F.R. §825.302(b).

c. *Failure to Provide Notice:* If an employee fails to give 30 days' notice for a foreseeable leave with no reasonable explanation for the delay, the leave may be denied until 30 days after the employee provides notice. 29 C.F.R. §825.302(a).

i. If the employee fails to provide enough information to determine whether the leave is FMLA-qualifying, the leave may not be qualified. 29 C.F.R. §825.302(c).

ii. The employee must comply with the usual and customary notice provisions for leave in place at each department. 29 C.F.R. §825.302(d).

2. By employer:

a. The Department HR Representative shall contact Human Resources immediately when an employee is seeking any period of extended leave.

b. When an employee is absent for 3 or more consecutive work days, the Department HR Representative shall notify Human Resources.

b. The employee will be required to use all but 10 days of any accrued annual, compensatory time, sick or personal leave, in lieu of unpaid leave time for any FMLA-qualifying purpose. An employee may not refuse to have the County designate their qualified leave as FMLA time. The Director of Human Resources may approve the use of unpaid leave at an employee's request to be determined on a case by case basis. 29 C.F.R. §825.207(a)-(c); 29 C.F.R. §825.207(g).

B. Application

1. The employee should complete an “Application for Family and Medical Leave” form and return it to the Human Resources Department. 29 C.F.R. §825.302(c).
2. In the event the leave is an emergency and the employee is not able to meet personally with Human Resources, the information may be gathered via telephone or email, and the forms will be mailed to the employee or their representative. 29 C.F.R. §825.302(g).

C. Notice of Eligibility and Rights and Responsibilities

Washoe County will provide the employee with a “Notice of Eligibility and Rights and Responsibilities” form within 5 business days of notification for the need for FMLA leave, absent extenuating circumstances. 29 C.F.R. §825.300(b)-(c).

D. Certification

Medical certification is required for any application for leave based on a serious health condition of the employee, a serious health condition of the employee’s spouse, child or parent, or a serious injury or illness of a covered service member. Certification is also required for a qualifying exigency. 29 C.F.R. §825.305(a).

1. Certification Forms must be completed

a. The employee is responsible for providing a completed Certification form. The applicable forms may be found on the HR Website.

- Employee’s Serious Health Condition
- Family Member’s Serious Health Condition
- Qualifying Exigency for Military Family Leave
- Injury or Serious Illness of Service Member
- Injury or Serious Illness of Veteran

b. The Certification form must be submitted to the Department HR Representative at least 15 days after the employee is notified of this requirement, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. 29 C.F.R. §825.305(b).

2. A Health Care Provider must assist with completion of medical information. 29 C.F.R. §825.306.

3. County may Contact Health Care Providers.

Washoe County may contact the health care provider for purposes of clarification and authentication of the medical certification, whether initial certification or recertification, after the County has given the employee an opportunity and appropriate time to cure any deficiencies. A Human Resources professional shall make such contact. 29 C.F.R. §825.307.

4. *Second Opinions*

If requested by the County, the employee will obtain a second opinion from a physician, selected by and paid for by the County. If a third opinion is required, a physician will be selected by mutual agreement between the County and the employee, with expenses paid by the County. Second and third opinions are not permitted for recertification, a release to return to work (fitness-for-duty certification) or certification regarding care for a covered service member. 29 C.F.R. §825.307.

5. *Delay in Leave*

Failure to comply with the above requests by the County may result in a denial or delay in receiving FMLA leave. 29 C.F.R. §825.305(d).

E. Designation Notice

1. Washoe County will provide a “Designation Notice” form, informing the employee whether or not leave is designated as FMLA leave and the amount of leave that will be designated, if known, when Washoe County has enough information to determine whether the requested leave is FMLA-eligible. 29 C.F.R §825.300(d).

2. This “Designation Notice” shall be provided within 5 business days of having sufficient information, absent extenuating circumstances. The five day period may be extended when necessary, to be determined on a case by case basis by the County. This designation may be retroactive. 29 C.F.R §825.300(d).

F. Extension of Leave and Return to Work

1. *Report to Department* - An employee on FMLA leave must report periodically about the employee’s status and intent to return to work, as required by the Department. 29 C.F.R §825.311(a).

2. *Extension of FMLA* - All employees requesting a leave extension should do so in writing, if possible, 2 weeks prior to the end of their scheduled leave. 29 C.F.R §825.311(c).

3. *Return to Work Release* - When FMLA leave is granted for the employee’s own health condition, the employee will be required to provide a “Physician’s Release” on the appropriate County form before returning to work. 29 C.F.R §825.312.

4. *Reduction of FMLA* - Should the return to work date be sooner than anticipated, the employee is required to notify their supervisor at least **2 work days** prior to the date he/she intends to report to work. 29 C.F.R. §825.311(a).

G. Recertification - Washoe County may request recertification of a serious health condition every 30 days in connection with an absence unless:

1. Circumstances have changed significantly, such as a change in the duration or frequency of absences, the severity of the conditions, or other complications. 29 C.F.R §825.312.
2. An employee requests an extension of leave. 29 C.F.R §825.312.
3. When the County receives information that casts doubt upon the employee's stated reason for the absence. 29 C.F.R §825.312.
4. If safety concerns exist. 29 C.F.R §825.312.

III. EMPLOYEE PROTECTIONS

A. Employee Health Benefits Maintained

1. *Paid Leave* - If paid leave is substituted for unpaid FMLA leave, the employee's share of premiums will be deducted from the employee's paycheck. 29 C.F.R. §825.210
2. *Unpaid FMLA Leave* - If FMLA leave is unpaid, Washoe County will maintain the employee's health coverage under the "group health plan" for the duration of FMLA leave on the same terms as if the employee was at work. 29 U.S.C. §2614(c)(1); 29 C.F.R. §825.209.
3. *Employee Pays Dependent Coverage* - The employee must continue to pay the employee's share of the premium for dependent coverage, which will be billed each pay period by Health Benefits. Failure to pay the premium within the requested period will result in termination of dependent coverage. The employee will have the option to reinstate dependent coverage upon return to full time employment with no waiting period or qualification requirements. 29 C.F.R. §825.209; 29 C.F.R. §825.210.
4. *Reimbursement* - If the employee fails to return to work after taking FMLA leave *for reasons other* than the continuation, recurrence, or onset of a serious health condition that would qualify for a FMLA leave, or other circumstances beyond the employee's control, **the employee is responsible to repay the County for the premiums paid for health coverage during the FMLA leave.** Premium cost will be automatically deducted from the final paycheck, sick leave or vacation payout, if and to the extent permitted by law, or the County may institute legal action to recover such costs. 29 C.F.R. §825.213.
5. *Other Benefits* - When an employee is on unpaid leave, no vacation or sick leave will accrue. For unpaid leave over 30 days, the employee will have an adjusted anniversary and career incentive date. 29 C.F.R. §825.209; 29 C.F.R. §825.210.

B. Job Restoration

1. Upon return from FMLA leave Washoe County will restore the employee to his or her original job or a position with equivalent pay, benefits, and other employment terms. 29 U.S.C. §2614(a)(1); 29 C.F.R. §825.214; 29 C.F.R. §825.215.

2. This protection does not apply to key employees. 29 C.F.R. §825.217; 29 C.F.R. §825.219.

C. Compensation During Leave

1. The employee will be required to use all but 10 days of any accrued annual, compensatory time, sick or personal leave, in lieu of unpaid leave time for any FMLA-qualifying purpose. An employee may not refuse to have the County designate their qualified leave as FMLA time. The Director of Human Resources may approve the use of unpaid leave at an employee's request to be determined on a case by case basis. 29 C.F.R. §825.207(a)-(c); 29 C.F.R. §825.207(g).

2. A workers' compensation absence and an employee's FMLA leave entitlement will run concurrently when the employee's on the job injury or occupational illness meets the definition of a serious health condition as defined by the FMLA.

D. Privacy of Medical Information

1. *Records confidential.* Records and documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members will be maintained by the Human Resources Department as confidential medical records in separate files/records from the employee's personnel file. 29 C.F.R. §1630.14(c)(1); 29 C.F.R. §825.500(g).

The information may be accessed by the following persons:

- Supervisors and managers may be informed of necessary restrictions on the work or duties of an employee and necessary accommodations;
- First aid and safety personnel may be informed, when appropriate, if an employee's physical or medical condition might require emergency treatment; and
- Government officials investigating compliance with the FMLA shall be provided relevant information on request.

2. *No Genetic Information.* The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law.

- a. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information.

b. “Genetic information,” as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services. 29 C.F.R. §825.500(g).

E. Interference with FMLA Leave is Prohibited.

1. FMLA is a protected leave as described under the Washoe County Discrimination, Harassment and Retaliation Policy. Any interference with an employee taking FMLA, asking for FMLA, or returning from FMLA is prohibited.

Forms

Forms:

- Application for FMLA Leave
- Notice of Eligibility and Rights and Responsibilities
- Release of Health Information
- FMLA Certification Forms:
 - Employee’s Serious Health Condition
 - Family Member’s Serious Health Condition
 - Qualifying Exigency for Military
 - Injury or Serious Illness of Service Member
 - Injury or Serious Illness of Veteran
- Designation Notice
- Release to Return to Work

All forms are available on the [Human Resources](#) page.

Related Information

FMLA At-A-Glance
Disability Accommodations Policy

List any other policies, or information that should be cross-referenced such as legal or regulatory information