



LAKE COUNTY
BOARD OF COUNTY COMMISSIONERS
County Procedure

Title: Military Family Leave (Family Medical Leave Act/FMLA) **Number:** ES-6.04.11
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I. PURPOSE AND SCOPE

The Family Medical Leave Act provides two new types of military FMLA leave – qualifying exigency leave and caregiver leave. The purpose of this document is to provide procedures for allowing eligible employees to take up to 12 weeks of military FMLA leave or 26 workweeks of caregiver leave. Time used for exigency or caregiver leave will be deducted from the standard 12-workweek allotment permitted by FMLA, with the exception of the caregiver leave which can extend beyond the 12 weeks to a total of 26 weeks.

II. REFERENCES

- A. The Family and Medical Leave Act of 1993 (FMLA) Code of Federal Regulations Title 29, Part 825
- B. Family Medical Leave Act (FMLA) Policy LCC-84
- C. Family Medical Leave Act (FMLA) Procedure # ES-6.04.08

III. DEFINITIONS

- A. Eligible employee: The term "eligible employee" means an employee who has been employed with the Lake County Board of County Commissioners (County) at least 12 months or fifty-two (52) weeks which need not be continuous and worked at least 1,250 hours during the previous 12-month period.
- B. Parent: The term "parent" means the biological, adoptive, step or foster mother or father, as well as an individual who stood in place of a parent to the employee when the employee was a son or daughter (as the term "son or daughter" is defined in the regulations and below), but does not include "parents-in-law".

- C. Son or daughter: The term "son" or "daughter" means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in place of a parent, who is of any age.
- D. Key employee: A "key" employee is a salaried "eligible" employee who is among the highest paid ten percent of employees.
- E. Job protected leave: The term "job protected leave" means that upon an employee's return from FMLA leave, he/she will be reinstated to the same or an equivalent job with the same pay, benefits and terms and conditions of employment.
- F. Covered Active Duty: The term "covered active duty" or "call to active duty" for members of a regular component of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country.

"Covered active duty" or "call to active duty" for members of the reserve components of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

- G. Contingency Operation: The term "contingency operation" is designated by the Secretary of Defense as an operation in which:
 - 1. Members of the armed forces are or may become involved in military actions, operations or hostilities against an enemy of the United States or against an opposing military force; or
 - 2. Results in the call or order to, or retention on, active duty of member of the uniformed services under Sections 688, 12301 (a), 12302, 12304, 12305, or 12406 or under Chapter 15 of Title 10 of the United States Code or under any other provision of law during a war or during a national emergency declared by the President or Congress.
- H. Covered military member: The term "covered military member" means a member of the military who is on "covered active duty" or "call to active duty status" and is an employee's spouse, son, daughter or parent.
- I. Covered Servicemember: The term "covered servicemember" means a 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 incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, rank, or rating.

The term "covered servicemember" also includes a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness if the veteran was a member of the Armed Forces at any time during the period of five (5)

years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

- J. Next of kin: The term "next of kin of a covered servicemember" means the nearest blood relative of a covered servicemember (other than his/her spouse, parent, son, or daughter), in the following priority order: blood relative designated in writing by the servicemember as his/her nearest blood relative for purposes of caregiver leave; blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions; brothers and sisters; grandparents; aunts and uncles; and first cousins.

Note: When a servicemember designates a blood relative as next of kin, he/she is the only next of kin eligible to take caregiver leave.

- K. Serious Injury or Illness: The term "serious injury or illness" for a current member of the Armed Forces means an injury or illness incurred by a covered servicemember in the line of duty on active duty, and/or a serious injury or illness that "existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces that may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating. The term "serious injury or illness" for a veteran means a qualifying injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

IV. **APPLICABILITY**

This procedure applies to all eligible employees of Lake County Board of County Commissioners (BCC).

V. **PROCEDURES**

There are two types of leave under the FMLA that specifically refer to military family leave. The following types of military family leave can be taken continuously, intermittently, or on a reduced schedule and count toward the 12-workweek (480 hours) FMLA allotment: Exigency leave and Caregiver leave, however Caregiver leave can extend to 26 weeks (1040 hours).

A. Exigency Leave

The purpose of exigency leave is to allow an employee whose spouse, son or daughter, or parent is on (or has been notified of an impending call to) covered active duty in the Armed Forces to take FMLA due to a qualifying exigency resulting from the covered military member's covered active military duty (or call to active duty status) in support of a contingency operation. Exigency leave is for non-medical purposes.

Eligible employees may take up to 12 workweeks (480 hours) of FMLA for exigency leave, and any time used for this purpose will be deducted from the standard 12-workweek FMLA allotment.

1. Types of Qualifying Exigency

An eligible employee may take military family leave for any of the following qualifying reasons:

a. Short-notice deployment activities

- (1) A military member receives seven (7) or less calendar days' notice prior to the date of deployment. The employee may take leave up to 7 days beginning on the date the military member receives the call or order to active duty for any purpose related to the military duty, including to spend time with the military member.

b. Military events and related activities

- (1) To attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of the military member (e.g., arrival or departure ceremonies).
- (2) To attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or American Red Cross that are related to the active duty or call to active duty status of a military member (e.g., family briefings that occur pre-deployment, during deployment, or post-deployment).

c. Childcare and school activities

- (1) To make alternative childcare arrangements of a military member's child (e.g., when existing arrangements need to be changed);
- (2) To provide childcare of a military member's child on an urgent, immediate need basis but not on a routine, regular, or everyday basis (e.g., when military duty disrupts preexisting arrangements; when military member is no longer able to transport the child to and/or from school or childcare; to pick up a sick child at school or daycare);
- (3) To enroll in or transfer a military member's child in a new school or day care facility (e.g., when the child is moved or relocated due to the military duty); and/or
- (4) To attend meetings with staff at a school or daycare facility (e.g.,

meetings with school officials regarding disciplinary measures, parent-teacher conference, or meetings with school counselors, but not for routine academic concerns).

d. Financial and legal arrangements

- (1) To make or update financial or legal arrangements to address the military member's absence while on active duty or call to active duty status (e.g., preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust, but not for routine matters such as paying bills); and/or
- (2) To act as the military member's representative before a federal, state, or local agency for purposes of obtaining, arranging or appealing military service benefits while the military member is on active duty or call to active duty status (up to a period of 90 days following the termination of the military member's active duty status)

e. Counseling activities – An employee may take military family leave to attend counseling, provided:

- (1) The need for counseling arises from the military member's active duty or call to active duty;
- (2) Such counseling is provided by someone other than a health care provider (e.g., military chaplain, pastor/minister, a non-health care provider offered by the military or a military service organization); and
- (3) The counseling is for the employee, the military member, and/or the military member's child.

f. Rest and recuperation activities

- (1) If a military member is granted short-term, temporary, rest and recuperation leave during the period of deployment, an employee may take military family leave to spend time with the military member.
- (2) An employee may take military family leave for such purposes up to five (5) days for each instance of rest and recuperation.

g. Post-deployment activities – An employee may take military family leave:

- (1) To attend arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military (e.g., briefings) for a period of 90 days following termination of the military member's active duty status.

- (2) To address issues that arise from the death of a military member while on active duty status (e.g., making funeral arrangements).
- h. Additional activities – An employee may take military family leave for other exigencies, provided:
 - (1) It arises out of the military member's active duty/call to active duty;
 - (2) The County and employee mutually agree that such leave shall be considered a qualifying exigency; and
 - (3) The County and employee mutually agree on both the timing and duration of the leave.

Note: This type of activity is intended to cover situations that are unforeseen and not within any prior type of exigency.

B. Caregiver Leave

1. The purpose of caregiver leave is to allow an employee whose spouse, son or daughter, parent or next of kin is a covered servicemember to take up to 26 workweeks of FMLA leave in a single 12-month period to care for that covered servicemember with a serious injury or illness.
2. Eligible employees may take up to a combined total of 26 workweeks (1040 hours) for caregiver leave in a single 12-month period. This 26 workweeks allotment would include any leave taken for other FMLA-qualifying reasons (e.g., for a qualifying exigency and other reasons as defined in FMLA Procedure ES-6.04.08).

For example, an employee who has already taken 12 workweeks (480 hours) of continuous leave for the birth of a child would only be entitled to an additional 14 weeks (560 hours) for caregiver leave.

The single 12-month period begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date, even though the County uses a rolling calendar method for calculating all other types of FMLA-qualifying leave.

If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during the "single 12-month period," the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

3. Caregiver leave is applied on a per-covered servicemember, per-injury basis. In a subsequent 12 month period, employees may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for a different covered servicemember or to care for the same servicemember with a subsequent

serious injury or illness, so long as the second 26-week period does not occur in the same 12-month period (e.g., employees may take no more than 26 workweeks of leave in each single “12-month period”).

4. If leave qualifies as both military caregiver leave and FMLA leave to care for a family member with a serious health condition, it must be counted as caregiver leave (it may not be counted as both caregiver leave and FMLA leave).

C. Procedure for Requesting Exigency or Caregiver Leave

1. Procedures for taking leave under this procedure are the same as regular FMLA leave. The employee must provide the County 30 days advance notice if the leave is foreseeable. If it is not possible to provide 30 days notice, the employee must give as much notice as is practicable, normally the same business day or next business day if off work when he/she learns of the need for leave.
2. If an employee fails to provide 30 days notice for foreseeable leave with no reasonable excuse for the delay, the County may require an explanation of why 30 days advance notice was not practicable. If timely notice is not given, the period of delay may count as non-military family leave absence.
3. When requesting leave for the first time for a particular military family leave-qualifying reason, employees must provide sufficient information for the County to reasonably determine whether military family leave may apply.
4. When subsequently requesting leave for the same military family leave-qualifying reason for which leave has previously been provided, the employee must specifically reference the qualifying reason or state “military family leave.”
5. When sufficient notice is provided that time off may be for a military family leave purpose, employees must consult with the County in advance to make a “reasonable effort” to schedule planned leave so as not to unduly disrupt County operations. Employees must advise the County as soon as practicable when their dates of leave change or become known.
6. All Supervisors, Managers, and Directors are required to inform Employee Services if and when an employee provides initial notice that time off may be needed for an FMLA purpose. This requirement is in place to ensure that leave is administered and designated correctly and that the employee receives the appropriate paperwork in a timely manner.
7. The County will provide individual notice of rights and obligations to each employee requesting military family leave.
8. Except where leave is not foreseeable, all employees requesting military family leave must complete the Application for Family or Medical Leave and submit to Employee Services prior to the taking the leave. If leave is unforeseeable, the employee must submit the Application for Family or Medical Leave within 15 days of receiving the FMLA paperwork packet from Employee Services.

9. Upon receiving notice that military family leave is needed, Employee Services will provide each employee requesting leave a packet that includes the following:
 - a. Employee Rights and Responsibilities Flyer
 - b. Notice of Eligibility and Rights and Responsibilities
 - c. Application for Family or Medical Leave
 - d1. Certification of Qualifying Exigency For Military Family Leave (Family and Medical Leave Act) – *if applicable*; or
 - d2. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (Family and Medical Leave Act) – *if applicable*
10. The County will also notify the employee in writing whether or not the leave qualifies and will be designated as military family leave.

D. Certification

1. Exigency leave – For first request for leave, employees are required to complete the Certification of Qualifying Exigency form.
 - a. Certification of active duty – The introductory portion of Section II of the Certification of Qualifying Exigency form is the certification of active duty. The County will not request the same information again for the same active duty/call to active duty for the same military member.
 - (1) The County will require the employee to provide a copy of the military member's active duty orders or other military documentation certifying that the covered military member is on active duty (or has been notified of an impending call to active duty) in support of a contingency operation.
 - (2) Certification of active duty is in effect for the dates of the military member's active duty status for the particular contingency operation.
 - b. Certification of qualifying exigency – The County will require employees to fill out Part A of Section II of the Certification of Qualifying Exigency form.
 - (1) The form must be sufficient to show that the reason for leave is a qualifying exigency and must include:
 - (a) A description of facts sufficient to show the reason for leave is a qualifying exigency (e.g., type of exigency and any available documentation such as meeting announcement of military information briefings, document confirming appointment with a counselor or school official, copy of bill for legal or financial services);
 - (b) Approximate date the exigency began or will begin;

- (c) If continuous, beginning and end dates for leave; if intermittent or reduced schedule leave, estimate of frequency and duration of exigency; and
 - (d) If exigency involves meeting with a third party; contact information for the third party (name, title, organization, address, phone, fax, email); and brief description of the purpose of the meeting.
 - (2) Certification of a particular exigency related to a particular military member's active duty service is in effect for the duration of that particular exigency.
 - c. For subsequent requests for leave arising out of different qualifying exigency or different active duty/call to active duty status of the same military member, or for a different military member, the County will require proof of such military status or exigency.
2. Caregiver leave - For first request for leave, employees are required to complete the Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave (Family Medical Leave Act).
- a. Certification of military status – Section I of the Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave form, which verifies the covered servicemember's military status, is to be completed by the employee. The County will not request the same information again for the same serious injury/illness of the same servicemember. However, for subsequent requests for leave arising out of a different serious injury/illness of the same servicemember or a serious injury/illness of a different servicemember, the County will require proof of such military status; and
 - b. Certification of serious injury/illness – Section II of the Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave form, which verifies the covered servicemember's serious injury or illness, is to be completed by a United States Department of Defense (DOD) Health Care Provider or a health care provider who is either 1) a United States Department of Veterans Affairs health care provider, 2) a DOD Tricare network authorized private health care provider, or 3) a DOD non-network Tricare authorized private health care provider.

The medical certification is in effect for duration of the condition and amount of time leave is needed as specified on the certification, up to a maximum period of 12 months beginning on the date the employee first takes caregiver leave for a particular serious injury/illness of a particular servicemember. Once the single 12-month period expires, any unused caregiver leave entitlement is forfeited, but the employee may qualify for regular FMLA leave to care for a family member with a serious health condition, and if so, can be required to submit a regular medical certification for it.

- c. Special automatic certification – The DOD may issue an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) to any member(s) of a servicemember’s family when a DOD health care provider has determined that the injury/illness is serious enough to warrant the immediate presence of a family member at a servicemember’s bedside. The ITO or ITA, which may or may not have the employee’s name on it, constitutes automatic certification of military status and serious injury/illness. The County may require proof of family relationship between the employee and servicemember. The ITO/ITA will be in effect for the duration specified on it.
 3. The certification form must be returned to Employee Services within 15 calendar days after the County requests it, regardless of whether leave is foreseeable or unforeseeable, unless it is not practicable to do so despite the employee’s diligent, good faith efforts. If certification is not returned within 15 calendar days and employee has not provided information about his/her diligent, good faith efforts, leave may be denied.
 4. A complete and sufficient certification or recertification is required. “Incomplete” means one or more of the applicable entries has not been completed. “Insufficient” means the information provided is vague, ambiguous, or non-responsive. If a certification is returned but is incomplete or insufficient, the County will provide written notice of what specific information is still needed and give the employee 7 calendar days to fix the deficiencies (unless 7 days is not practicable under the particular circumstances despite the employee’s diligent, good faith efforts). If certification is not returned at all within any required 7-day fix period (and employee has not provided information about his/her diligent, good faith efforts), or is timely returned but does not fix the deficiencies, leave may be denied.
 5. The County has no obligation to notify the employee that a certification has not been received during the 15-day or 7-day periods, however the County makes every attempt to notify the employee in such cases.
 6. If the certification is complete and sufficient, the County may verify the certification by contacting an appropriate DOD unit to verify the military member is on active duty or call to active duty status without the employee’s permission. The County may also contact the individual or entity with whom the employee is meeting to verify the meeting or appointment schedule and the nature of the meeting.
- E. Employee Status and Use of Leave During FMLA Leave
1. While on leave, employees are requested to report periodically to their Supervisor regarding their intent to return to work. The supervisor must communicate with the employee and document specific expectations and obligations of the employee who is exercising his/her military family leave entitlement.

2. When an employee returns from military family leave, anniversary dates will remain the same (including annual evaluation dates).
3. Military family leave runs concurrently with all other forms of leave (e.g., sick, annual, or unpaid), and may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances as specified in this procedure.
4. It is the County's right and obligation to determine whether an employee's leave is eligible for military family leave (FMLA). If an employee is taking time off from work and the County has reason to believe that such time off falls under the FMLA provisions (e.g., the employee is out for a military family member's serious health condition), the County can count the leave toward the employee's 12-week entitlement (or 26 weeks in the case of Caregiver leave).

An employee may be retroactively placed on FMLA leave after leave has begun if the reason for the leave is determined to be an FMLA qualifying event. Based on the information provided by the employee, the County will determine whether leave used by the employee shall be counted as FMLA leave and will immediately notify the employee. If leave is subsequently designated as FMLA leave by the County, the employee must comply with the requirements of the FMLA Policy and Procedure.

5. If the employee has accrued paid leave (e.g., sick or annual), the employee must use paid leave first and take the remainder of the twelve weeks as unpaid leave.
6. Outside or supplemental employment is generally prohibited during paid and/or unpaid FMLA leave. Exceptions may be granted on a case-by-case basis, but must be approved prior to the commencement of the leave.
7. Employees in classifications deemed to be "exempt" from the overtime requirements of the Fair Labor Standards Act (FLSA), who take FMLA leave on an intermittent/reduced work schedule basis, will document time worked on an hour by hour basis. Only FMLA qualifying hours will be classified as FMLA.

F. Employee Benefits During Leave

1. The County will continue the employee's health benefits while an employee is on approved military family leave, during the leave period at the same level and under the same conditions as if the employee had continued to work in accordance with the following:
 - a. The County will continue to make employee-authorized payroll deductions for all benefits while the employee is receiving sufficient pay.
 - b. When the employee's pay is insufficient to cover payroll deductions for benefits or when an employee has exhausted all leave accruals and is approved for military family leave, the employee must continue to make payments for the employee portion of the benefit premiums. Payments

should be made payable to "Lake County BCC" and sent to Employee Services by no later than the first day of each month for the current month's coverage. If the payment is more than 30 days late, the employee's benefits coverage may be dropped or frozen for the duration of the leave. The County will provide a 15-day notification prior to the employee's loss of coverage.

2. The County will not require reimbursement for maintaining health care coverage if the employee does not return to work for one of the following reasons.
 - a. If the leave is for the serious health condition of a family member and the employee is unable to return to work permanently and separates from County employment because he/she needs to care for the family member. Documentation must include a statement that the employee is needed to care for that family member on the date that the approved FMLA leave expired and the family member's condition still qualifies under FMLA on the date of permanent separation of employment with the County.
 - b. An employee who returns to work for at least 30 calendar days, or retires during the 30 days after the employee returns to work, is considered to have "returned" to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member, or a circumstance beyond the employee's control, the County will require the employee to reimburse the County the amount it paid for the employee's health and/or dental coverage during the leave period. The rate charged to the employee will be that of the applicable COBRA rate.

G. Employee Unable to Return After Leave

1. If the employee is unable to return to work at the end of an approved FMLA leave period and the employee needs to extend the military leave (FMLA) leave period (within the 12 weeks/480 hours entitlement, or 26 weeks of caregiver leave) beyond what is stated in the initial/current certification, a new certification must be submitted within 15 calendar days (unless not practicable to do so despite the employee's diligent, good faith efforts).
2. Leave extending beyond the 12-week FMLA, or 26 weeks for caregiver leave, allotment does not carry the return rights under FMLA (as in Section H.1).

H. Employee Status after Leave

1. An employee who takes leave under this policy will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms.
2. Under specified and limited circumstances where restoration to employment will cause substantial economic hardship to County operations, the County may

refuse to reinstate certain highly-paid "key" employees after using military family leave.

3. Failure to return to work following an authorized leave may subject the employee to non-corrective action separation of employment and repayment of insurance as indicated in F.2.
4. Employees who fraudulently obtain military family leave from the County are not entitled to job restoration or continuation of employee benefits and may be subject to progressive corrective action up to and including termination of employment.

I. Employer Notice Requirements

- a. The "Employee Rights and Responsibilities" poster will be posted on all work location official employment-related bulletin boards and distributed to new hires.
- b. It is the responsibility of County supervisors and management staff to ensure that policies, procedures, management practices and other supervisory activities are in full compliance with the intent of this policy.

VI. RESERVATION OF AUTHORITY

The authority to issue or revise this Procedure is reserved to the County Manager. The County Manager may authorize exceptions to this procedure when deemed appropriate.



Sanford A. Minkoff
Interim County Manager
Lake County