

## **Kenosha County Family and Medical Leave Policy**

Kenosha County provides job protected unpaid leave to eligible employees as required by the Wisconsin and Federal Family and Medical Leave Acts (FMLA). This policy sets forth the guidelines for eligibility and use of such leaves. It also sets forth the consequences of failure to meet required obligations associated with Family and Medical Leave.

### **ELIGIBILITY**

Eligibility requirements and entitlements are different under state and federal law. Where an employee is entitled to leave under both laws, the leave shall be applied concurrently. State and Federal Family and Medical Leave will also run concurrently with Accident & Sickness benefit and Workers Compensation.

### **STATE**

To be eligible for the leave provisions of this law, employees must have been employed by Kenosha County for at least 52 consecutive weeks and have worked at least 1000 hours during the 12 months immediately preceding the beginning of a requested leave (hours worked includes hours paid pursuant to vacation, Accident and Sickness (A&S) benefit time, Workers Compensation or other paid time off).

### **FEDERAL**

To be eligible for the leave provisions of this law, employees must have been employed by Kenosha County for at least 12 months and have worked at least 1250 hours during the 12 months immediately preceding the beginning of a requested leave (hours worked is actual hours at work; hours paid pursuant to vacation, A&S benefit time, or other paid time off will not be counted toward hours worked).

### **REASONS FOR LEAVE**

The Acts provide six situations in which an eligible employee is entitled to Family or Medical Leave:

1. The birth of a child and to care for the employee's newborn child;

2. To care for the employee's child who has been placed with the employee for adoption (State & Federal) or foster care (Federal only);
3. To care for the employee's spouse, child, parent, and same or opposite sex domestic partner\* (state only), parent-in-law (state only) or domestic partner's parent (state only), who has a *serious health condition*;
4. For a *serious health condition* that makes the employee unable to perform his/her job duties and responsibilities;
5. A qualifying military exigency (Federal only); or
6. Military Caregiver Leave (also known as the Covered Service Member Leave) (Federal only).

*\*Kenosha County follows the State of Wisconsin's definition of Domestic Partner as outlined in Section 770.01(1), and Section 40.02(21c)(21d). Employees are required to complete an Affidavit of Domestic Partnership to qualify for a leave of absence under the State's Family and Medical Leave Act.*

#### **LEAVES AVAILABLE**

##### **STATE**

An employee is entitled to up to six weeks of unpaid Family and Medical Leave in a calendar year for:

1. Birth of employee's child or placement of child for adoption or as a precondition to adoption. Leave must be taken within 16 weeks of birth, adoption, or placement.

An employee is entitled to a maximum of two weeks of unpaid Family Leave and two weeks unpaid Medical Leave in a calendar year to:

1. Care for the employee's spouse, domestic partner, child, parent, parent-in-law, or domestic partner's parent who has a *serious health condition*.
2. For a *serious health condition* that makes the employee unable to perform his/her job duties and responsibilities.

##### **FEDERAL**

An employee is entitled to up to 12 weeks of unpaid Family and Medical Leave in a calendar year for any of the following events listed below:

1. Birth of employee's child or placement of child for adoption or as a precondition to adoption or placement of a child in foster care. Leave must be taken within 12 months of birth, adoption, or placement.
2. To care for employee's child, spouse or parent who has a *serious health condition*.
3. For an employee's *serious health condition* that renders that employee unable to perform his/her job duties and responsibilities.
4. For an employee who experiences a qualifying exigency that arises out of the fact that a spouse, child or parent is on active duty (or has been notified of an impending call or order to active duty) associated with any deployment to a foreign country, for family members of active duty service members as well as family members in the National Guard or Reserves.
5. Military Family Leave - Eligible employees are entitled to 26 weeks during a single 12-month period (reduced by each week used for the other types of leave above) for military caregiver leave to care for a covered servicemember who suffers a service-related serious injury or illness associated with any deployment to a foreign country. This includes veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment. Military caregiver leave also permits leaves associated with pre-existing injuries or illnesses that are aggravated during active duty.

#### **PROCEDURE TO REQUEST LEAVE**

When requesting leave, an employee must:

- Submit a completed Family and Medical Leave Request Employee form and a Family and Medical Leave Physician or Practitioner Certification form, that contains a Genetic Information Nondiscrimination Act (GINA) Disclosure statement to the Division of Human Resources within a reasonable period of time prior to the start of the leave or, in cases of medical emergency or unforeseen circumstances, as soon as practicable under the circumstances. (Intermittent leave guidelines are further clarified in a separate section of this policy); or

- Submit a completed Family and Medical Leave Request Employee form, a Certification of Qualifying Exigency for Military Family Leave form, or a Certification for Serious Injury or Illness of Covered Service member for Military Family Leave that contains a Genetic Information Nondiscrimination Act (GINA) Disclosure statement to the Division of Human Resources within a reasonable period of time prior to the start of the leave.
- Notify his/her supervisor that FMLA request and certification forms have been submitted to the Division of Human Resources. Identify the leave start date and anticipated duration of leave.
- Cooperate with all requests for information regarding whether absences are FMLA qualifying.
- You may be required to complete Federal Family and Medical Leave forms in addition to the Kenosha County Family and Medical Leave Request forms if your leave is anticipated to last longer, or extends more, than the State's two weeks for your own or family member's serious health condition.

Certification is necessary to justify an employee's absence from work for leave. If an employee fails to provide the County with a timely certification, the leave request, or continuation of leave, will be delayed or denied.

#### **LEAVE AUTHORIZATION NOTIFICATION**

The Division of Human Resources will confirm the need for family, medical, exigency or caregiver leave based upon the information submitted by the employee and medical provider. **If the County has sufficient information that the employee qualifies for any of the above leaves, the absence will be so classified unless notice is provided otherwise.** The County may, at its expense, require a medical examination by a health care provider of its own choosing if it has a reasonable question regarding the medical certification provided by the employee. For Federal Leave only, in lieu of a second opinion, the County may contact the health care provider directly to clarify or authenticate a medical certification, including certifications for Military Caregiver Leave. Second opinions will not be required for Military Caregiver Leave. Separate

certification may also be required regarding the nature of the family member's military service and/or the existence of a qualifying exigency.

**The employee will be notified if the leave is being denied.**

#### **INTENT TO RETURN TO WORK**

An employee must provide the County with advance notice of the employee's intent to return to work. An employee who decides not to return to work at the end of FMLA leave must advise the County immediately. An employee who fails to return at the end of FMLA leave will in most cases be considered to have voluntarily resigned employment with the County, unless the employee is entitled to additional leave as a reasonable accommodation under the Americans with Disabilities Act.

#### **FITNESS FOR DUTY CERTIFICATE**

An employee on Federal Medical Leave due to the employee's own serious health condition must provide the County with a fitness for duty certificate before the employee is allowed to return to work. Failure to provide a complete and sufficient fitness for duty certificate from a health care provider will result in the delay, and potential denial, of return to work.

#### **INTERMITTENT**

When medically necessary and with the required notice to management, employees may take FMLA leave intermittently or on a reduced schedule basis in increments equal to the shortest increment permitted for any other non-emergency leave. If possible, the employee must attempt to schedule this leave so as not to disrupt the County's operations. There may be circumstances where the County will assign the employee to an alternative position which better accommodates the intermittent leave schedule.

Qualifying exigency leave may be taken intermittently without regard to medical necessity or disruption of County operations.

#### **SUBSTITUTION**

An employee may choose to be paid any available accrued paid leave or PTO during the time of a Wisconsin FMLA absence. An employee will be required to use available accrued paid leave while on Federal FMLA leave. An employee receiving A&S pay will be charged Family Medical Leave. An employee receiving Worker's Compensation pay and whose injury or illness qualifies as Family Medical Leave will be charged Family Medical Leave. An employee will not be able to be paid available employer-provided paid leave during the time of a Worker's Compensation leave because the employee will be receiving Worker's Compensation benefits.

When paid leave is used along with FMLA leave, this paid leave will not be available to the employee later. If the employee does not meet the requirements for the use of accrued paid leave under applicable County policies, the employee may still be entitled to take unpaid FMLA leave. Under no circumstances will an employee be entitled to additional Family and/or Medical Leave as a result of the substitution of paid leave.

#### **MAINTENANCE OF BENEFITS AND EMPLOYMENT PROTECTIONS**

During any period of State and Federal FMLA leave, the County will maintain health coverage under its group health plan at the same level and under the same conditions as provided to all other employees in the employee's class. Employee contributions and premiums toward the cost of coverage are required to be paid by the employee during the leave. If required payment is not timely made, health insurance may be cancelled, provided the County notifies the employee in writing at least 15 days before the date that the health coverage will lapse; or at the County's option, the County may pay the employee's share of the premiums during a FMLA absence, and recover these payments from the employee upon return to work.

Upon return from FMLA leave, the County will restore an employee to the original or equivalent position with equivalent pay, benefits, and other employment terms in accordance with the Acts.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of FMLA leave.

If an employee does not return to work following a FMLA-qualifying leave for a reason other than: a) the continuation, recurrence, or onset of a serious health condition which would entitle the employee to FMLA leave; b) the continuation, recurrence, or offset of a covered service member's serious injury or illness which would entitle the employee to FMLA leave; or c) other circumstances beyond the employee's control, the employee may be required to reimburse the County for its share of health insurance premium payments made on the employee's behalf during FMLA leave.

#### **MARRIED COUPLES**

If an employee and his/her spouse both work for the County, they are both eligible for leave. The employee and the employee spouse may be limited to a combined total of 12 weeks of FMLA leave in a 12-month period if the leave is taken for: a) the birth, adoption, or foster placement of a child; b) to care for and bond with such child who does not suffer from a serious health condition; c) to care for a parent with a serious health condition; or d) a combination of the above.

For Military Caregiver Leave, the employee and employee spouse may be limited to a combined total of 26 weeks of leave in a 12-month period, including the types of leave listed above in this paragraph.

#### **RECERTIFICATION**

An employee may be required to provide the County with recertification no more than every six (6) months if the serious health condition still prevents the employee from performing his/her job functions or that the employee is still needed to care for a family member with a serious health condition.

The County may request recertification in less than six (6) months if:

- Circumstances described by the previous certification have changed significantly (e.g. the duration and/or frequency of the absence, the nature or severity of the illness, complications). For example, if an employee has a pattern of using unscheduled FMLA leave for migraines in conjunction with his or her schedule days off, then the timing of

the absences also might constitute a significant change in circumstances sufficient for an employer to request a recertification more frequently than every six (6) months; or

- The County receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. For example, an employee is on FMLA leave for four weeks due to an employee's knee surgery, including recuperation, and the employee plays in softball league games during the employee's third week of FMLA leave, such information might be sufficient to cast doubt upon the continuing validity of the certification allowing the County to request a recertification in less than six (6 months).

The employee must provide the requested recertification to the County within the timeframe requested by the County (which must allow at least 15 calendar days after the County's request.) Any recertification requested by the County shall be at the employee's expense.

Should the provisions of the FMLA(s) be changed at any time, this policy will be considered modified to the extent that it complies with the new FMLA(s). This policy is NOT intended to be all inclusive; the County may refer to the Family Medical Leave Acts for further clarification.

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