

## **Hertford County**

### **Family and Medical Leave Policy**

#### Purpose

The Family and Medical Leave Act of 1993 was passed by the Congress to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote the national interest 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.

#### Eligible Employees

Regular Employees An employee who has been employed with Hertford County for at least 12 months and who has worked 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. A workweek is defined as the number of hours an employee is regularly scheduled to work each week. A calendar year is defined as a 12-month period that runs from January 1 through December 31.

1. For the birth of a child and to care for the child after birth, provided the leave is taken within a 12 month period following birth.
2. For the employee 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 the adoption or Foster care placement.
3. For the employee to care for the employee's child, (Under age 18, or age 18 or older and incapable of self-care because of a disability) spouse, or parent (in-laws not included), where that child, spouse, or parent has a serious health condition; or because the employee has a serious health condition that makes the employee unable to perform the functions of the employee's position.
4. Employees who are married to one another are limited to a combined total of 12 weeks of leave during the 12 month period if the leave is taken for: The birth of employees child or to care for the newborn child; the placement with the employee of a child for adoption or foster care; or care of the employees parent with a serious health condition.

5. For the employee whose spouse, child, or parent is on, or has been notified of an impending call to, active duty status in the National Guard or Reserve (or as a retired member of the regular Armed Forces or Reserves) in support of a contingency operation (Active Duty Leave). Other reasons may also include: short notice deployment; attendance at certain military programs related to active duty assignment; attendance at appointments related to financial or legal planning as a result of active duty assignment; attendance at counseling sessions that are needed as a result of an active duty assignment; short term temporary rest and recuperation leave of a covered service member during a time of deployment; attendance at certain other post deployment activities; and other activities as agreed by the County and employee.

#### Service Member Family Leave

Additionally, under the FMLA, eligible employees may be granted up to a total of 26 weeks of unpaid leave during a single 12 month period to care for a spouse, child, parent (in-laws not included), or next of kin (nearest blood relative) who is a current member of the Armed Forces (including the National Guard or Reserves) and has incurred an injury or illness in the line of duty while on active duty in the Armed Forces, provided that such injury or illness renders the service member medically unfit to perform the duties of the service member's office, grade, rank or rating and for which the service member is undergoing medical treatment, recuperation or therapy, or the service member is in outpatient status, or is on the temporary disability retired list.

#### Leave without pay

Leave without pay beyond the 12 week period or for employees not covered under the FMLA policy will be administered under the Hertford County Personnel Ordinance. Under these provisions, employees must pay for health benefits coverage.

#### Definitions

Parent — A biological or adoptive parent, foster 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.

Child — Is a son or daughter who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a disability who is:

- A. A biological child
- B. An adopted child
- C. A foster child — a child for whom the employee perform the duties of a parent as if it were the employee's child
- D. 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

#### F. A child of an employee standing in loco parentis

Spouse - A husband or wife

Serious health condition — an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical care facility, or that involves continuing treatment by a health care provider.

#### Leave Charges

For the birth of a child, the employee is required to exhaust all available leave to include vacation, sick, comp, and gap time. This applies to both parents.

#### Intermittent Leave or Reduced Work Schedule

Pursuant to this policy, the employee may take leave intermittently or on a reduced work schedule for childbirth and birth related child care or for adoption.

When medically necessary, the employee may take leave intermittently or on a reduced schedule because the employee has a serious health condition. 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.

When an employee is on a reduced work schedule, the time not worked is counted against the total 12 workweeks.

#### Employee Responsibility

The employee shall apply in writing to the supervisor for leave requested under this policy as follows:

1. Birth or adoption —The employee shall give the County no less than 30 day's-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.
2. Planned medical treatment — When the necessity for the leave to care for the employee's child, spouse, or parent or because the employee has a serious health condition, the employee must make a reasonable effort to schedule the treatment so

as not unduly to disrupt operations, subject to the approval of the employee's health care provider or the health care provider of the employee's child, spouse, or parent. The employee must also give 30 day's-notice if practicable of the intention to take leave.

The employee shall be deemed to have applied for leave under this policy when: (a) the employee is on approved leave but has not given written notice of the intent to take family or medical leave to the supervisor, (b) the employee utilizes leave for any purpose whether with or without pay for a period in excess of 3 calendar days and (c) the basis for the leave fall within the scope of this policy. In these cases, the County shall notify the employee that time spent on paid leave or leave without pay during the 3 calendar day period is a part of the 12 workweeks of leave.

If the employee will not return to work after the period of leave, the County should be notified in writing immediately. Failure to report at the expiration of the leave, unless an extension has been requested, may be considered as a resignation.

#### Certification

For leave pursuant to this policy, the County may require that a claim for leave because of adoption be supported by reasonable proof of adoption.

The County may require that a claim for leave because of a serious illness of the employee or of the employee's child, spouse, or parent be supported by a doctor's certification which includes the following:

- The date on which the serious health condition began
- The probable duration of the condition
- The appropriate medical facts regarding the condition
- A statement that the leave is needed to care for the child, spouse, or parent, and an estimate of the amount of time that is needed; or that the employee is unable to perform the functions of the position, whichever applies
- Where certification is necessary for intermitted leave for planned medical treatment, the date on which the treatment is expected to be given and the duration of the treatment

Where the County has reason to doubt the validity of the certification, the county may require the employee to get the opinion of a second doctor designated or approved by the County. Where the second opinion differs from the opinion in the original certification provided, the County may require the employee to get the opinion of a third doctor designated or approved jointly by the employer and the employee. The third opinion is final and is binding on the County and the employee. The County may require that the employee get subsequent recertification's on a

reasonable basis. The second and third certifications and the recertification must be at the County's expense.

#### Employment and Benefits Protection

1. Reinstatement — The employee shall be reinstated to the same position held when the leave began or one of like pay grade, pay, benefits, and other conditions of employment. The County may require the employee to report at reasonable intervals to the employer on the employee's status and intention to return to work. The County also may require that the employee receive certification that the employee is able to return to work.
2. Benefits — The employee shall be reinstated without loss of benefits accrued when the leave began, and all benefits accrued during any period of paid leave. However, no benefits will be accrued during any period of leave without pay.
3. Health Benefits — The County shall maintain coverage for the employee under the County's group health plan for the duration of leave at the level and under the conditions coverage would have been provided if the employee had continued employment. 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.

#### Interference with Rights

1. 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.
2. Protected Activity — It is unlawful to discharge or in any manner discriminate against any employee because the employee does any of the following:
  - a. Files any civil action, or institutes or causes to be instituted any civil proceeding under or related to this policy.
  - b. Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this policy.
  - c. Testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this policy

## Enforcement

A violation of or denial of leave request pursuant to the Family and Medical Leave Act of 1993 is not a contested case and creates no right of grievance or appeal under the State Personnel Act and the Hertford County Grievance Procedure. 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,
- c. Administrative action by the U.S. Department of Labor

For further information, see the Federal Regulations Part 825 of the Family and Medical Leave Act of 1993.