

**BANDERA COUNTY  
POLICY ON FAMILY AND MEDICAL LEAVE**

**ELIGIBILITY**

1. To be eligible for benefits under this policy, an employee must:
  - a. Have worked for Bandera County at least 12 months (it is not required that these 12 months be consecutive; however, a continuous break in service of 7 years or more will not be counted toward the 12 months); and
  - b. Have worked at least 1250 hours during the previous 12 months.

**QUALIFYING EVENTS**

2. Family or medical leave under this policy may be taken for the following situations:
  - a. The birth of a child and in order to care for that child;
  - b. The placement of a child in the employee's home for adoption or foster care;
  - c. To care for a spouse, child, or parent with a serious health condition; or
  - d. The serious health condition of the employee that makes the employee unable to perform the essential functions of their job; or
  - e. A qualifying exigency arising out of the fact that an employee's spouse, child, or parent is a covered military member (National Guard or Reserves) on active duty or has been notified of an impending call or order to active duty in support of a contingency operation; or
  - f. To care for a covered service member (Regular Armed Forces, National Guard, or Reserves) with a serious injury or illness if the employee is a spouse, child, parent, or next of kin (nearest blood relative) of the service member.

**SERIOUS HEALTH CONDITION**

3. Serious health condition of the employee shall be defined as a health condition that requires overnight inpatient care at a hospital, hospice, or residential care medical facility or continuing treatment by a health care provider.
4. Serious health condition of a spouse, child, or parent shall be defined as a condition which requires inpatient care at a hospital, hospice, or residential care medical facility, or a condition which requires continuing care by a licensed health care provider.

**CONTINUING TREATMENT**

5. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
  - a. A period of incapacity of more than three (3) 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 within 30 days of incapacity, or

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2. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment by a health care provider. This treatment must occur within the first seven days of incapacity.
  - b. Any period of incapacity due to pregnancy or pre-natal care,
  - c. Any period of incapacity or treatment due to a chronic serious health condition that requires periodic visits to a health care provider and continues over an extended period of time.
  - d. Any period of incapacity which is permanent or long term due to a condition that treatment is not effective.
  - e. Any period of incapacity or absence to receive multiple treatments by a health care provider.

## **QUALIFYING EXIGENCY LEAVE**

6. Eligible employees may take FMLA leave when an employee's covered military member (spouse, child of any age, or parent) is on active duty or called to active duty status in support of a contingency operation. The following qualify as exigency leave:
  - a. Leave may be taken to address any issue that arises because the covered military member was given seven or less days notice for active duty deployment in support of a contingency operation. Eligible employees may take up to 7 days beginning on the date the covered military member receives the call or order to active duty.
  - b. Leave may be taken 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 a covered military member.
  - c. Leave may be taken to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to active duty or call to active duty status of a covered military member.
  - d. Leave may be taken to arrange for alternative childcare, provide childcare on an urgent basis (not as routine), to attend school or daycare meetings, to enroll or transfer covered children under age 19 when it is necessitated by the active duty or call to active duty status of a covered military member.
  - e. Leave may be taken to make or update financial or legal arrangements to address the covered members absence while on active duty or call to active duty status.
  - f. Leave may be taken to act as the covered military members representative before a governmental agency for obtaining, arranging, or appealing military service benefits while the covered military member is on active duty or call to active duty status and for a period of 90 days following the termination of the covered member's active duty status.
  - g. Leave may be taken to attend counseling provided by someone other than a health care provider for oneself, for the covered military member or covered

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child provided the need for counseling arises from the active duty status or call to active duty status of a covered military member.

- h. Leave may be taken to spend time with a covered military member who is on a short-term, temporary, rest and recuperation leave during the period of deployment. Eligible employees may take up to fifteen (15) days of leave for each instance for rest and recuperation.
- i. Leave may be taken to attend post-deployment activities for the covered military member for a period of 90 days following the termination of the covered member's active duty status.
- j. Leave may be taken to address issues that arise from the death of a covered military member while on active duty.
- k. Leave may be taken to address any other additional events that may arise out of the covered military member's active duty or call to active duty status provided the County agrees the leave shall qualify as an exigency and agree to both the timing and the duration of such leave.

### **LEAVE AMOUNT**

- 7. Up to 12 weeks leave per 12-month period may be used under this policy.
- 8. The County will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy.
- 9. All leave taken under this policy during the prior 12-month period shall be subtracted from the employee's 12-week leave eligibility and the balance is the leave the employee is entitled to take at that time.
- 10. If a husband and wife both work for the County, the maximum combined leave they shall be allowed to take in any 12-month period for the birth or placement of a child is 12-weeks.
- 11. An eligible employee is entitled up to 26 workweeks of leave to care for a covered service member with a serious injury or illness during a single 12-month period.
  - a. The single 12-month period begins on the first day the eligible employee takes FMLA to care for covered service member and ends 12 months after that date.
  - b. If an eligible employee does not take all of their 26 workweeks during this 12-month period, the remaining part of the 26 workweeks of leave entitlement to care for the covered service member is forfeited.
  - c. This leave entitlement is applied on a per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered service members or to care for the same covered service member with a subsequent serious illness or injury, except that no more than 26 workweeks may be taken within any single 12 month period.

## **POLICY ON FAMILY AND MEDICAL LEAVE (cont)**

- d. If an eligible employee has already taken any portion of their eligible FMLA leave they will only be entitled to a combined total of 26 workweeks for any FMLA qualifying event in the single 12 month period.

### **PAID AND UNPAID LEAVE**

12. An employee who is taking leave because of their own serious health condition, or the serious health condition of an eligible family member shall be required to use their time in the following order: earned compensatory time, sick leave, vacation, and any other paid leave, with the remainder of the 12 week leave period being unpaid leave.
13. An employee taking leave for the birth of a child shall be required to use their time in the following order: sick leave, compensatory time, vacation, and holiday leave for the recovery period after the birth of the child and prior to being on unpaid leave.
14. After the recovery period from giving birth to a child, the employee shall be required to use their time in the following order: earned compensatory time, vacation, and other available paid leave, except for sick leave with the remainder of the 12 week leave period being unpaid leave.
15. An employee who is taking leave for the placement of a child in the employee's home for adoption or foster care shall be required to use their time in the following order: earned compensatory time, vacation, and other available paid leave, except for sick leave, with the remainder of the 12 week leave period being unpaid leave.
16. An employee that is taking leave for a qualifying exigency for a covered military member shall be required to use their time in the following order: earned compensatory time, vacation and other available paid leave, except for sick leave, with the remainder of the 12 week leave period being unpaid leave.
17. An employee taking leave for the care of a covered service member shall be required to use their time in the following order: earned compensatory time, sick leave, vacation, and other available paid leave, with the remainder of the 26 week leave period being unpaid leave.
18. The maximum amount of paid and unpaid leave that may be used under this policy in any 12-month period is 12-weeks, except for qualifying leave to care for a covered military member with a serious injury or illness with the maximum leave being 26 weeks in a single 12 month period.

## **POLICY ON FAMILY AND MEDICAL LEAVE (cont)**

### **INSURANCE**

19. While on leave under this policy, the County shall continue to pay the employee's medical insurance premium at the same rate as if the employee had been actively at work.
20. The employee shall be required to pay for dependent coverage, and for any other insurance coverage for which the employee would normally pay, or the coverage will be discontinued.
21. Payment for coverage under section 21 of this policy shall be made through regular payroll deduction while the employee is on leave with pay.
22. While on leave without pay, the employee shall be required to pay for the premiums due to the County under section 22 of this policy no later than 30 days after the due date which the County sets or the coverage shall be discontinued.
23. At the end of the 12 week leave, all eligible employees will be offered COBRA if they are unable to return to work, except for the care of an injured covered military member where the eligible employee will be offered COBRA at the end of 26 weeks in a single 12 month period.

### **INTERMITTENT LEAVE & REDUCED SCHEDULE**

24. Intermittent leave under this policy shall be allowed only where it is necessary for the care and treatment of the serious health condition of the employee, the employee's eligible family member, or the care of a covered military member.
25. A reduced schedule under this policy shall be allowed only where it is necessary for the care and treatment of the serious health condition of the employee, the employee's eligible family member, or the care of a covered military member.
26. All work time missed as the result of intermittent leave or a reduced work schedule under this policy shall be deducted from the employee's 12-week leave eligibility. If the time missed is for the care of a covered military member with a serious injury or illness the time will be deducted from the employee's 26 week leave eligibility in a single 12 month period.

### **CERTIFICATION REQUIREMENTS**

27. The County shall have the right to ask for certification of the serious health condition of the employee or the employee's eligible dependent when the employee requests or is using leave under this policy.

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28. The employee must respond to the request within 15 days of the request or provide a reasonable explanation for the delay. If an employee does not respond, leave may be denied.
29. Certification of the serious health condition of the employee shall include:
- a. The date the condition began;
  - b. Its expected duration;
  - c. The diagnosis of the condition;
  - d. A brief statement of the treatment; and
  - e. A statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee's job.
30. Certification of the serious health condition of an eligible family member shall include:
- a. The date the condition began;
  - b. Its expected duration;
  - c. The diagnosis of the condition;
  - d. A brief statement of treatment; and
  - e. A statement that the patient requires assistance and that the employee's presence would be beneficial or desirable.
31. Certification for leave taken because of a qualifying exigency shall include:
- a. A copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or called to active duty status in support of a contingency operation;
  - b. The dates of the covered military members active duty service;
  - c. A statement or description, signed by the employee, of appropriate facts regarding the qualifying exigency, sufficient to support the need for leave;
  - d. The approximate date on which the qualifying exigency will start and end;
  - e. If the request is for an intermittent leave or reduced schedule basis, an estimate of the frequency and duration of the qualifying exigency;
  - f. If the qualifying exigency involves meeting with a third party, appropriate contact information such as: name, title, organization, address, telephone number, fax number and e-mail address and a brief description of the purpose of the meeting.
32. Certification for leave taken for a serious injury or illness of a covered military member shall include:
- a. If the injury or illness was incurred in the line of duty while on active duty;
  - b. The approximate date on which the illness or injury occurred and the probably duration;

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- c. A description of the medical facts regarding the covered military members health condition, sufficient to support the need for care;
- d. If the covered military member is a current member of the Regular Armed Forces, the National Guard or Reserves and the covered military member's branch, rank, and unit currently assigned to;
- e. The relationship of the employee and the covered military service member;
- f. In lieu of certification, an ITO (invitational travel orders) or an ITA (invitational travel authorizations) issued is sufficient certification for a eligible employee to be allowed to take FMLA to care for a covered military member. The employee may be required to provide confirmation of the covered family relationship to the seriously injured or ill covered military member.

33. If the employee plans to take intermittent leave or work a reduced schedule, the certification shall also include dates and the duration of treatment and a statement of medical necessity for taking intermittent leave or working a reduced schedule. Certification for intermittent or reduced scheduled leave may be requested every 6 months in connection with an eligible absence.

34. The County shall have the right to ask for a second opinion from a physician of the County's choice, at the expense of the County, if the County has reason to doubt the certification, except FMLA to care for a seriously injured or ill covered service member supported by an ITO or ITA.

35. If there is a conflict between the first and second certifications, the County shall have the right to require a third certification, at the expense of the County, from a health care practitioner agreed upon by both the employee and the County, and this third opinion shall be considered final.

### **REQUESTING LEAVE**

36. Except where leave is unforeseeable, an employee shall be required to submit, in writing, a request for leave under this policy to his or her immediate supervisor, which the supervisor shall forward to the Human Resource Office.

37. Where practicable, an employee should give his or her immediate supervisor at least 30 days notice before beginning leave under this policy.

38. Where it is not reasonably practicable to give 30 days notice before beginning leave, the employee shall be required to give as much notice as is reasonably practicable.

39. If an employee fails to provide 30 days notice for foreseeable leave, the leave request may be denied until at least 30 days from the date the County receives notice.

### **REINSTATEMENT**

## **POLICY ON FAMILY AND MEDICAL LEAVE (cont)**

40. Employees returning from leave under this policy, and who have not exceeded the 12 week maximum allowed under this policy, shall be returned to the same job or a job equivalent to that the employee held prior to going on leave. Employees who have not exceeded the 26 week maximum, in a single 12 month period, allowed to care for a seriously ill or injured covered military member, shall be returned to the same job or a job equivalent to the job they held prior to going on leave.

41. Where an employee is placed in another position, it will be one which has equivalent status, pay, benefits, and other employment terms and one which entails substantially equivalent skill, effort, responsibility, and authority.

42. The County shall have no obligation to reinstate an employee who takes leave under this policy and who is unable to return to work after using the maximum weeks of leave allowed under this policy, or who elects not to return to work after using the maximum leave; this includes employees who may still have sick leave or vacation leave still available.

### **REPAYMENT OF PREMIUMS**

43. Except in situations where the employee is unable to return to work because of the serious medical condition of the employee or an eligible family member, or other situations beyond the control of the employee, an employee who does not return to work after using the maximum leave allowed under this policy shall be required to reimburse the County for all medical premiums paid by the County while the employee was on leave without pay.

### **OTHER BENEFITS**

44. While on leave without pay under this policy, an employee shall not earn vacation, sick leave, be eligible for holidays, or earn other benefits afforded to employees actively at work, except for those stated in this policy.

### **OTHER ISSUES**

45. Any area or issue regarding family and medical leave which is not addressed in this policy shall be subject to the basic requirements of the Federal Family and Medical Leave Act (FMLA) and the regulations issued to implement it.

46. The County may send out to an employee who has been out for 3 or more days a Medical Certification to determine the employee's FMLA eligibility. The employee should have their physician complete and return the certification within 15 days of receipt to be eligible for FMLA. Failure to return the medical certification may result in denial of FMLA.



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47. Employees will be required to provide a Bandera County Physical Capabilities Form prior to returning to work to their department head/elected officials and to the Human Resource Office.

48. The department head/elected official, Human Resource Office, and employee will review information received from the doctor and jointly determine if appropriate work is available if the employee is not given a full release.