

# Warren County Board of Supervisors

## RESOLUTION NO. 217 OF 2015

**Resolution introduced by Supervisors Taylor, Kenny, Sokol, Merlino, Dickinson, Girard, Vanselow, Wood and Simpson**

### **ADOPTING FAMILY AND MEDICAL LEAVE POLICY FOR WARREN COUNTY EMPLOYEES**

WHEREAS, the Warren County Human Resources Director has presented a revised Family and Medical Leave Policy which the Personnel Committee has reviewed and approved and is submitted herewith to the Board of Supervisors, now, therefore, be it

RESOLVED, that the Warren County Board of Supervisors does hereby adopt the Family and Medical Leave Policy for Warren County employees as attached hereto, and a copy of which is on file with the Clerk of the Board of Supervisors, with the understanding that this policy supercedes and replaces the prior Family and Medical Leave Policy adopted by Resolution No. 383 of 2005.

**Warren County, New York**  
**Family and Medical Leave Policy (FMLA)**

**Policy**

It is the policy of Warren County to grant up to 12 weeks of family and medical leave during any rolling 12-month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA) and/or up to 26 weeks of leave in any 12-month period in compliance with the expansion of FMLA under The Support for Injured Servicemembers Act of 2007. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy. This policy supersedes any and all Policies or Resolutions addressing the same or similar subject matter.

**A. Eligibility**

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

- 1) The employee must have worked for the employer for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive, provided a break-in-service does not exceed seven years (unless the break-in-service is due to National Guard or Reserve military service obligation). For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of the week or if the employee is on leave during the week.
- 2) The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

**B. Type of Leave Covered**

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the six reasons listed below:

- 1) The birth of a child and in order to care for that child
- 2) The placement of a child for adoption or foster care and to care for the newly placed child
- 3) To care for a spouse, child or parent with a serious health condition (children must be under age 18 unless incapable of self-care because of physical or mental disability)
- 4) The serious health condition of the employee (described below in C.3)
- 5) A qualifying military exigency (a covered family member's active duty or call to active duty in the National Guard or Reserves in support of a contingency operation)
- 6) To care for an injured or ill Servicemember

**C. Definitions and Requirements**

- 1) Child refers to a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis.
- 2) Spouse refers to a husband or wife as defined or recognized under state law for purposes of marriage under the state where the employee resides, including same-sex marriages.
- 3) Employee's Serious Health Condition: An employee may take leave because of a serious health condition that makes the employee unable to perform at least one of the essential

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functions of the employee's position. The County considers all responsibilities listed under "Typical Work Activities" sections of a job description as "essential" functions.

A serious health condition is defined as an illness, injury, impairment or mental condition that involves:

- a. Incapacity or treatment connected with in-patient care (overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity; or
- b. Continuing treatment by a health care provider which includes one or more of the following:
  - i. A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
    1. treatment two or more times by or under the supervision of a health care provider (i.e., in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or
    2. one treatment by a health care provider (i.e., an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or
  - ii. Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or
  - iii. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or
  - iv. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
  - v. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

If an employee takes Paid Time Off (PTO) (PTO is defined at Warren County as sick, vacation, personal time or a floating holiday) for a condition that progresses into a serious health condition and the employee requests FMLA leave for the same condition as provided under this policy, the County may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

- 4) **Qualifying Military Exigency:** An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty in the National Guard or Reserves, or who is already on active duty in the National Guard or Reserves may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave, except that the person does not have to be a minor. Reasons related to the call-up or service may include items such as:
  - Short-notice deployment,
  - Military events and related activities,
  - Arranging for childcare and school activities,

- Addressing financial and legal arrangements,
- Attending certain counseling sessions,
- Rest and recuperation,
- Post-deployment activities, and
- Additional activities where the employer and employee agree to the leave.

The leave may commence as soon as the individual receives the call-up notice. This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a rolling 12-month period.

Employees requesting this type of FMLA leave must provide proof of the qualifying family member's call-up or active military service in the National Guard or Reserves and other documentation as requested before leave is granted.

Employees requesting leave based on a qualifying family member's short notice deployment leave (deployment with 7 days or less notice) must provide proof of the qualifying family member's deployment with the National Guard or Reserves before leave is granted. Requests under this section will not require additional documentation and are not to exceed 7 days.

Employees requesting leave based on a qualifying family member's short-term Rest and Recuperation ("R & R") leave from a deployment with the National Guard or Reserves must provide proof of the qualifying family member's "R & R" leave before leave is granted. Requests under this section will not require additional documentation and are not to exceed 5 days.

- 5) **To Care for an Injured or Ill Servicemember:** This leave may extend to up to 26 weeks in a rolling 12-month period for an employee whose spouse, son, daughter, parent or next-of-kin is injured or recovering from an injury suffered while on active military duty and who is unable to perform the duties of the Servicemember's office, grade, rank or rating. Next-of-kin is defined as the closest blood relative of the injured or recovering Servicemember. An employee is also eligible for this type of leave when the family Servicemember is receiving medical treatment, recuperation or therapy, even if the Servicemember is on temporary disability retired list.

Employees requesting this type of FMLA leave must provide certification of the family member or next-of-kin's injury, recovery or need for care. This certification is not tied to a serious health condition as for other types of FMLA leave. This is the only type of FMLA leave that may extend an employee's leave entitlement beyond 12 weeks to 26 weeks. Other types of FMLA leave are included with this type of leave for a maximum of 26 weeks.

**D. Calculation of Employee Leave Years**

An eligible employee can take up to 12 weeks (26 weeks to care for an injured or ill Servicemember) under this policy during any 12-month period. The employee may take FMLA leave in consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the work week or work day, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 work weeks (or 26 work weeks to care for an injured or ill Servicemember) over a rolling 12-month period.

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. Each time an employee takes leave, the County will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 (or 26) weeks of available leave with the balance remaining being the amount the employee is entitled to take at that time.

If a married couple both work for the County, if both are eligible for FMLA, and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent in-law) with a serious health condition, the married couple may only take a combined total of 12 weeks of leave (or combined 26 weeks of leave to care for an injured or ill Servicemember).

**E. Requesting a FMLA Leave of Absence – Process and Requirements**

To request a FMLA leave of absence contact your Supervisor, Department Head and/or Human Resources who will provide you with applicable forms and information about your rights and responsibilities under FMLA. You must give notice of the need for a FMLA leave of absence at least thirty (30) days before any foreseeable leave. If thirty (30) days' notice is not practical because of an emergency or other circumstance, the leave should be requested as soon as possible (within two business days of learning of the need for leave).

In all cases, employees will be required to complete an appropriate Certification form, which will be provided by Human Resources. The employee must respond to this request within fifteen (15) days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of the leave request. If the certification is deficient or incomplete, the employee will be given seven (7) days to cure the deficiencies and return the form to Human Resources. The leave request may be denied if the employee either fails to return the form by the seventh (7th) day, or returns the form without adequate corrections or clarifications.

To request a leave for a serious health condition on a continuous or intermittent basis, you will be required to submit information from an appropriate health care provider confirming the existence of the serious health condition and other relevant information. Human Resources will provide you with a medical Certification of Health Care Provider for Serious Health Condition form for this certification.

Periodic reports and additional physician certifications may also be required during leave. The County may, at its own expense, require a second (or third) opinion regarding a medical certification. If you fail to provide timely certifications, your leave request may be delayed or denied.

For a serious health condition of your family member, a medical certification about the needed care for the family member, information about the care of the family member, and an estimate of the time needed must be provided from the eligible family member's physician. Human Resources will provide you with a medical Certification of Healthcare Provider for Family Member's Serious Health Condition form for this certification.

For care of an injured Servicemember, a medical certification about the needed care for the Servicemember, information about the care for the Servicemember, relationship to the

Servicemember, and an estimate of time needed must be provided from the Servicemember's physician. Human Resources will provide you with a medical Certification for Serious Injury or Illness of a Current Servicemember form for this certification.

For a qualifying exigency, a copy of the Servicemember's orders will be necessary to prove the active duty status or impending call to active duty status in support of a contingency operation. In addition, an estimate of time needed must be provided by the employee. Human Resources will provide you with a Certification for Qualifying Exigency form for this certification.

Human Resources will provide you with a notification within five days of receiving your complete Certification. The notification will specify whether your leave request was approved, or reason for denial, as applicable.

Any misrepresentation in FMLA certifications and/or re-certifications presented to the County may result in disciplinary action up to and including termination of employment.

**F. Taking Time Off Under an Approved FMLA Leave of Absence – Process and Requirements**

Employees are required to report all absences under approved FMLA both to their Supervisor and Department Head. The department Fiscal Manager may be substituted for the Department Head at the discretion of the Department Head. If none are available notify the Department of Human Resources.

- 1) Continuous Leave - Employees taking continuous leave may report the entire absence at once. Employees taking continuous leave, that are approved to return to work prior to the original leave end date, must notify their Supervisor and Department Head so that their hours may be accurately adjusted. A medical doctor's release to return to work will be required for those who are on leave for their own serious medical condition.
- 2) Intermittent Leave - Employees taking intermittent leave must report each absence to the Supervisor and Department Head. Failure to report your absences to both parties may result in disciplinary action.

When FMLA Leave is requested due to the employee's own serious health condition, the employee must use any accrued sick leave prior to approval for non-paid leave.

When FMLA Leave is requested due to any of the remaining 5 types (see B. Type of Leave Covered on page 1) of leave, the employee must comply with the Sick Leave and/or Medical Leave provisions of their Collective Bargaining Agreement.

**Intermittent Leave**

Intermittent or a reduced schedule leave must be scheduled so as not to unduly disrupt the County or Department operations whenever possible. The employee must reach agreement with the Supervisor, Department Head and Human Resources before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary. If the employee has an approved or pending intermittent leave, and have a planned absence, the employee will be required to report that absence to the appropriate management

representative (Supervisor and Department Head) 30 days prior to the absence, if possible. If 30 days' notice is not possible, the employee must report the absence in a timely manner to their Supervisor and Department Head.

The minimum permissible increment of FMLA time off is one hour. Employees may not take FMLA leave time in less than one hour increments. During those one-hour increments of FMLA time, employees will not be permitted to work even if they only needed 15 minutes of time off (such as late arrivals, for example).

Employees taking intermittent FMLA leave are required to follow the County's established attendance and call-off procedures unless it is not reasonably possible. If it is not reasonably possible, then employees taking intermittent FMLA leave will be required to notify their Supervisor or if not available the Department Head of the special circumstances under which they could not comply as soon as reasonably possible. Failure to report absences with the required attendance/tardiness reporting guidelines without sufficient showing of special circumstances may result in disciplinary action.

If an employee would otherwise be required to work overtime (such as mandatory overtime), but cannot do so because of FMLA leave, the overtime hours the employee would have worked also count as FMLA leave. If overtime is voluntary, the overtime an employee is not able to work because of FMLA leave does not count as FMLA leave.

Holidays are counted as FMLA leave if the employee is on FMLA leave the entire week in which a holiday falls. If the employee takes FMLA leave for less than a full workweek in which a holiday falls, the holiday does not count as FMLA leave.

The County may temporarily reassign an employee on an intermittent or reduced schedule basis to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care, if in the County's judgment, better accommodates the leave.

For the birth, adoption or foster care of a child, the County and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

The County will request re-certification of qualifying FMLA reasons as often as permitted by law. Failure to produce such recertification may result in denial of the leave request. As permitted by law, the County may contact the employee's health care provider to authenticate or clarify FMLA certifications and /or re-certifications.

**G. Employee Status and Benefits During Leave**

While an employee is on leave, the County will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to

work, provided the employee continues to pay his or her portion of the health care premiums.

Under current policy, the employee pays a portion of the health care premium. While on paid leave (i.e. using sick time in conjunction with FMLA), the County will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make these payments, to the Warren County Treasurer. The payments must be received by the 15th day of each month. If payment is not received by the 30th of each month, it will result in termination of coverage. The County's Benefit Broker will provide 15 days' notification prior to the employee's loss of coverage.

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 insurance premium during the leave period.

**H. Procedure for Returning to Work Following Leave for Serious Health Condition for the Employee**

Employees returning to work following leave for their own serious health conditions are required to provide a complete and sufficient Return-to-Work and Fitness for Duty Certification, which must be completed by the health care provider in conjunction with review of the employee's job description and physical demands. The physician must indicate the employee is able to resume the major and essential functions of the job. The County considers all responsibilities listed under "Typical Work Activities" sections of a job description as "essential" functions.

The Return-to-Work and Fitness for Duty Certification form and job description may be obtained from your Supervisor, Department Head or Human Resources. This Return-to-Work and Fitness for Duty Certification must be submitted within 15 days of, and no later than two days prior to the anticipated return to work date.

If the Return-to-Work and Fitness for Duty Certification is incomplete or insufficient, the employee will be given seven calendar days to cure the deficiencies. Failure to provide Return-to-Work and Fitness for Duty Certification in the 15-day time period or to cure deficiencies within the seven-calendar day period without reasonable explanation will result in the employee not permitted to return to work.

Employees who have a disability under the ADA may be provided reasonable accommodations or extensions of leave and should refer to the Warren County Americans with Disabilities Act (ADA) Policy. A copy of which is available on our website; see Resolution 356 of 2013, or contact the Self-Insurance Department.

**I. Employee Status after Leave**

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. The position will be the same in terms of pay, benefits and working conditions.

The County may choose to exempt certain key employees from this requirement and not return them

to the same or similar position. Key employees are defined as Management, Non-Bargaining Unit, salaried employees who are among the highest paid 10 percent of all employees.

**J. Maximum Leave of Absence and Termination of Employment**

If you fail to return to work on the first day after your FMLA leave expires, New York State Civil Service Law Sections 71 or 73 may be initiated. Job restoration is guaranteed for up to 12-weeks of FMLA leave, except under circumstances provided by law. The County's PTO allocations for Vacation, Personal Leave and Floating Holidays may be used at the conclusion of FMLA with prior approval of the Supervisor and Department Head.

**K. Employment While Out on Leave**

An employee's inability to perform job duties while out on FMLA or any other authorized leave of absence for the County, is assumed to extend to any other job duties the employee may have outside of the County employment as indicated in the employee's medical certification.

If you are not on an approved FMLA Leave or you give a false or non-validated reason for a leave of absence, termination of employment will be pursued through New York State Civil Service Law Section 75.

**L. FMLA Policy Questions**

Call or stop by the Department of Human Resources if you have questions regarding this policy.