
SUBJECT: FAMILY MEDICAL LEAVE ACT

EFFECTIVE DATE: September 4, 2012

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This policy is written to ensure that Cass County complies with the 1993 Federal Family Medical Leave Act.

Introduction

Family medical leave is a benefit granted to employees who have worked for Cass County for at least 12 months and who have had 1,250 hours of service with Cass County during the previous 12 months. An employee who meets the above eligibility requirement shall be entitled to a total of 12 work weeks of leave during a 12-month rolling period looking backward for one or more of the following reasons:

- For the birth or placement of a child for adoption or foster care;
- For your own serious health condition;
- To care for an immediate family member (spouse, child or parent) with a serious health condition; or
- Because of a qualifying exigency arising out of the fact that the employee's spouse, child (of any age), or parent is on or has been notified of an impending call or order to Covered Active Duty; or
- Because you are the spouse; son or daughter; parent; or next of kin of a covered servicemember with a serious injury or illness.

It is the policy of Cass County, that employees requesting Family Medical Leave ("FML") will be required to use annual leave, applicable sick leave and appropriate family sick leave prior to using leave without pay. The 12-week FML standard includes paid leave as well as leave without pay.

Spouses employed by the same employer are jointly entitled to a combined total of 12 work weeks of family leave for the birth or placement of a child for adoption or foster care, and to care for a parent (but not a parent-in-law) who has a serious health condition.

An employee that does not meet the above eligibility requirements may receive leave on a pro-rated basis, dependent upon the percentage of the FTE of their position and at the discretion of the department head.

Designation of Family Medical Leave

Employees seeking FML will be required to provide:

- (1) 30-day advance FML written notice of the need to take FML when the need is foreseeable; or
- (2) In emergency or unanticipated situations, department heads/supervisors will be responsible for informing employees of the FML options; designation of FML and the development of FML plans as appropriate;

In either case, the Notice of Eligibility and Rights and Responsibilities form must be completed. In most cases, the U.S. Department of Labor (DOL) form attached will be used. However, if not applicable, other DOL forms may be found on the Cass County website. Individual cases may be reviewed with the Personnel Office.

Additional Information That May Be Required

Written medical certification statements, supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;

Written notice of intention to return from leave;

A second medical opinion may be required and paid for by the employer;

If there is a conflict between the first and second medical opinions, a third health care provider, mutually agreeable to both parties, shall be considered to be final and shall be binding on the employer and the employee;

Periodic recertification, as appropriate, from medical providers; and

Periodic reports, as appropriate, during FML regarding the employee's status and intent to return to work.

Development of Family Medical Leave Plans

When all the necessary information is presented, the employer and employee will develop an individualized FML plan. This plan will identify the dates and specific types of leave to be used and a monitoring plan. FML for birth or placement for adoption or foster care must conclude within 12 months of birth or placement.

Appropriate leave utilization will depend on the unique situation but must comply with the county policy regarding the specific type of

leave. Family medical leave may consist of a combination of different types of leave, such as a combination of sick leave, annual leave and leave of absence without pay.

Under FMLA, a pregnancy-related leave may include different kinds of leave:

1. "Sick leave" may be part of a pregnancy-related leave, which lasts for the period of time (generally six weeks) during which a woman is physically unable to work due to pregnancy, childbirth, recovery and related medical conditions; and
2. The "family leave" part of FMLA is the time taken off to be home with a new baby, not because of a physical disability. The portion of the FMLA may include annual leave or leave of absence without pay.

The type of leave to be used should be outlined in the FML plan but may be modified based on the actual situation and needs of the employee.

Under some circumstances, employees may take FML intermittently - which means taking leave in blocks of time or by reducing their normal weekly or daily work schedule. FML may be taken intermittently whenever medically necessary to care for a seriously ill family member or because the employee is seriously ill or unable to work. FML for birth or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.

Under limited circumstances where restoration of employment will cause substantial and grievous economic injury to its operations, the county may refuse to reinstate certain highly-paid "key" employees. If FML is used by a "key" employee and the county decides it cannot restore the employee with the initial FML plan, the county will inform the employee in writing of the decision and reasons behind it and will offer the employee a reasonable opportunity to return to work.

Maintenance of Benefits

During FML, the county shall maintain group health insurance coverage at the same rate which the employee was receiving at the time of FML leave request. Employees will need to continue to pay the same share of health insurance premiums while on leave and these premiums will be due on the 30th day of the month preceding the month of coverage. If an employee fails to return to work from FML, the county may recover premiums paid to maintain health coverage for an employee, unless the reason the employee fails to return is the presence of a serious

health condition which prevents the employee from performing his or her job or is due to circumstances beyond the employee's control.

An employee has a 30-day grace period for late premium payments. After that date, if an employee fails to pay premiums, the employer can terminate health coverage. However, once an employee returns to work, his/her health benefits must be restored to at least the same level and terms as when the leave began and the employee can't be required to meet any qualification requirements such as a waiting period.

Retirement/Life Insurance

An employee who is on a FML without pay status will be required to pay all life insurance and cancer insurance premiums (except the \$3,500 amount paid by the county) to Cass County by the first of each month. He/she may choose to be billed directly for NDPERS life. Failure to pay premiums when due will require the employee to reapply for life insurance with medical underwriting.

When an employee is on FML without pay, NDPERS contributions made by Cass County will cease until such time as the employee returns to work. This break in contributions will affect the number of months worked when the employee retires.

An individual plan will be developed for all other voluntary payroll deductions for an employee using FML.

Employees do not receive paid holidays nor accrue annual leave or sick leave while on uncompensated family leave. There is no loss of tenure while an employee is on FML (legal opinion). Upon returning to work, the employee will be restored to their original job or to an equivalent job with equal pay and benefits. Tenure and rate of leave will be maintained.

Other issues

All information regarding FML will be maintained in the medical records personnel files and will be maintained for three years.

Definitions:

"Serious Health Conditions" means an illness, injury, impairment or physical or mental condition that involves:

Any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay in a hospital, hospice or residential medical-care facility;

Any period of incapacity requiring absence more than three calendar days from work, school or regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or

Continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days and for prenatal care.

"Health Care Provider" means:

Doctors of medicine or osteopath authorized to practice medicine or surgery by the state in which the doctor practices; or

Podiatrist, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulations of the spine to correct a subluxation as demonstrated by ex-ray to exist) authorized practice and performing within the scope of practice, under state law; or

Nurse practitioners and nurse-midwives authorized to practice, and performing within the scope of their practice, as defined under state law; or

Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts.

"Key Employee": an eligible salaried employee who is among the highest paid 10% of all the employees employed by the employer within 75 miles of the employee's work site.

You may access the Department of Labor Notice of Eligibility form by clicking on the following link.

[Notice of Eligibility and Rights & Responsibilities](#)