



Weber County Human Resources Policy 4-100 Family and Medical Leave Act (FMLA)

I. Purpose

This policy explains the circumstances under which an employee may take time off from work for family care, medical care, covered service member care, or due to a qualifying event.

II. Policy

It is the policy of Weber County to provide employees with a general description of their rights under the [Family and Medical Leave Act](#). In the event of a conflict between this policy and the applicable law, employees will be afforded all rights required by law.

III. Procedures

A. General Provisions

1. Eligibility – To qualify for family or medical leave the employee must meet the following conditions:

- a. The employee must have worked for Weber County for 12 months or 52 weeks (2,080 hours). The 12 months or 52 weeks (2,080 hours) need not have been consecutive.
- b. Separate periods of employment will be counted if the employee's break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to Active Duty Service, National Guard or Reserve Military Service.
- c. The employee must have worked at least 1,250 actual hours during the 12-month period immediately prior to the requested leave date.

2. Type of Leave Covered - The employee must be taking leave for one of the reasons listed below:

- a. For incapacity due to pregnancy, prenatal medical care, or child birth
- b. The placement of a child for adoption or foster care and to care for the newly placed child
- c. To care for the employee's spouse, adult designee, child, dependent child of an adult designee or parent with a serious health condition
- d. For the employee's own serious health condition

3. FMLA Leave and Other Leave Usage

- a. This policy is not intended to lengthen any other leaves available to employees. Any leave given to an employee under another policy for one of the reasons stated in this policy will be considered to be FMLA. FMLA leave runs concurrently with any other leave.

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- b. Weber County will grant up to 12 weeks (480 hours) of family and medical leave during any 12-month period after the requested leave date.
 - i. The 12-month period for FMLA leave is calculated as the 12-month period measured forward from the date of the employee's first FMLA leave usage.
 - ii. If spouses both work for Weber County 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 spouses may only take a combined total of 12 weeks of leave.
- c. Weber County will grant a military caregiver, caring for a covered service member injured as a result of military service, leave for up to 26 weeks (1,040 hours) during any 12-month period after the requested leave date.

4. Serious Health Condition Defined

- a. A serious health condition is an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job or prevents the qualified family member from participating in school or other daily activities.
- b. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, incapacity due to pregnancy, or incapacity due to a chronic condition.
- c. Other conditions may meet the definition of continuing treatment.
 - i. If an employee takes paid leave for a condition that progresses into a serious health condition Weber County may designate all or some portion of related leave taken under this policy, to the extent that the earlier leave meets the necessary qualifications.

5. Procedure

- a. Whenever an employee requests leave under this policy that is based on a foreseeable medical event, the employee must provide the County at least 30 days notice before the date the leave is to begin. In situations where a medical emergency precludes 30 days notice, the employee must provide as much notice as is practical. This means in no event more than two days after the serious health condition arises.
- b. Supervisors must notify HR when an employee is incapacitated from work for three or more consecutive days or when they have been given advance notice of a serious health condition by the employee.
- c. Once HR has been notified of an employee's request for leave they will reach out to the employee with the required FMLA paperwork.
- d. When an employee requests leave under this policy for their own serious health condition or to care for a child, spouse, or parent with a serious health condition, the County will require that the employee support the leave request with a [Certification of Health Care Provider](#) form.
- e. Employees will have 15 calendar days to obtain certification. Failure to provide medical certification within 15 days may delay the commencement of leave, suspend continuation of leave and/or lead to the application of the County's attendance policy including disciplinary action for unauthorized absenteeism.

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- i. Any health care provider forms that are returned without all of the required information will not be accepted. If this occurs, then to determine whether the leave qualifies for FMLA, HR may require the employee to submit additional information to clarify the medical certification. The employee must provide the additional information within seven days after receiving written notice from HR stating what additional information is necessary to make the certification complete and sufficient.
 - ii. HR may require the employee to provide reasonable documentation or statements verifying family relationships within 15 days of the request.
 - iii. Employees may be required to submit periodic reports while on leave regarding their status and return to work.
- f. Employees may be required to obtain a second medical opinion, at the County's expense including reimbursement for reasonable out of pocket travel expenses in accordance with Internal Revenue Service medical mileage rate guidelines.
 - i. If the first and second medical opinions differ, the employee or the County may request a third medical opinion at the County's expense.
 - ii. The third health care provider must be approved jointly by the County and the employee.
 - iii. If the employee does not act in good faith with reaching an agreement for the third opinion, the second medical opinion will be binding.
 - iv. If the County does not act in good faith in reaching an agreement for the third opinion, the first medical opinion will be binding.
- g. HR will provide written notice of an employee's eligibility for FMLA leave within five business days from receipt of an employee's request to take FMLA leave or upon determining the employee's leave may be for an FMLA-qualifying reason. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible.
 - i. As part of the Eligibility Notice, HR will provide written notice to an employee qualifying for FMLA leave detailing the specific expectations and obligations of the employee and explaining the consequences of failure to meet these obligations.
 - ii. Return to Work Certification – In cases where an employee's own serious health condition affects the ability to perform the duties of the position, HR may require as a condition of reinstatement, a certification that the employee is able to perform the essential functions of the job. The Designation Notice will inform the employee of this requirement and will include a list of the essential functions of the position.
 - iii. Retroactive Designation – If HR does not designate FMLA leave as required, they may retroactively designate leave as FMLA with notice to the employee provided the failure to timely designate leave does not harm or injure the employee. In cases where leave would qualify for FMLA, the department head and employee may agree to retroactively designate the FMLA leave.
 - iv. FMLA leave will be documented as such in the payroll system.

6. Recertification of Medical Condition

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- a. **30-Day Rule** – Except for the circumstances described in paragraphs b. and c. below, HR may request recertification no more than every 30 days and only in connection with an employee’s use of FMLA leave.
- b. **Less than 30-Day Rule** – HR may request certification in less than 30 days if the employee requests an extension of leave, the circumstances described by the certification have changed significantly (e.g. the duration or frequency of the absence, the nature or severity of the illness) or HR receives information that casts doubt upon the employee’s stated reason for the absence or the continuing validity of the certification.
- c. **More than 30-Day Rule** - If the medical certification indicates the minimum duration of the condition will be more than 30 days, recertification cannot be requested until the minimum duration expires. In all cases, recertification may be requested every six months in connection with an employee’s absence.
- d. **Annual Medical Certification** - When the need for leave exceeds a single leave year, HR may require the employee to provide a new medical certification in each subsequent leave year.
- e. HR may provide the health care provider with a record of the employee’s absence pattern and ask if the serious health condition and need for leave is consistent with such a pattern.
- f. An employee will provide the requested recertification within 15 calendar days from receipt of the request.
- g. No second or third opinion may be required on recertification.

7. Intermittent or Reduced Schedule Leave

- a. Intermittent leave or leave on a reduced schedule is available for the care of an immediate family member, as defined, with a serious health condition or for the employee's own serious health condition. The following conditions apply:
 - i. Only the actual amount of leave taken on an intermittent or reduced schedule may be counted towards an employee's FMLA leave entitlement.
 - ii. Intermittent leave or leave on a reduced work schedule is not available for the birth or placement of a child unless approved by HR.
 - iii. HR may temporarily reassign an employee who has requested leave on an intermittent or reduced work schedule when the leave 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. The employee will receive the pay and benefits of the regular position for the hours of work performed. The employee may be reassigned to a part-time position with the same rate of pay provided the employee is not required to take more leave than is medically necessary.

8. Insurance/Benefits while on FMLA

- a. An employee on unpaid family or medical care leave who wants to maintain health, dental, 125 pre-tax cafeteria deductions or life insurance will be required to pay the same premium or cafeteria payroll deduction normally paid.
- b. An employee who fails to submit the required premium payment will be notified in writing and given 15 calendar days after the notification before coverage is canceled,

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- provided that the coverage may not be canceled until after the payment is 30 days late.
- c. If upon the expiration of family or medical leave, the employee chooses not to return to work, the employee will be required to reimburse the county for premiums paid by the county.
 - d. If the employee does not return to work due to a medical circumstance that would entitle the employee to leave under FMLA the employee is not required to reimburse premiums paid by the county. Employees will be required to furnish medical certification to support their claim. Employees who fail to furnish the requested information within 30 days of the request will be required to reimburse the County for insurance premiums paid during the unpaid leave.
 - e. An employee who returns to work for at least 30 calendar days is considered to have returned to work.
 - f. An employee who transfers directly from taking FMLA leave to retirement or who retires during the first 30 days after returning to work is deemed to have returned to work.
 - g. Premiums owed to the county may be deducted from any sums owed by the County to the employee.
 - h. If an employee elects to discontinue insurance coverage while on leave without pay, upon return to work, the employee may reinstate the same insurance coverage.
 - i. Employees who are on FMLA leave during open enrollment will be provided with the same options as active employees.
 - j. While on unpaid FMLA leave an employee is not eligible for accumulation of paid time off or retirement benefits as provided by State law.

9. Reinstatement from Leave

- a. Upon return from FMLA under the provisions of this policy, the employee will return to the former position or an equivalent position in terms of pay, benefits and working conditions within the department or elected office from which the leave was granted. An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.
- b. If the supervisor determines the employee will not be reinstated to the former position, but to an equivalent position, written notice will be provided to the employee.
- c. If, during the period of leave, the payroll unit where the employee worked undergoes a reduction-in-force and there is no vacant allocation to which the employee may be reinstated, normal reduction-in-force (RIF) procedures will be followed:
 - i. If the position the employee formerly encumbered was abolished during the period of leave for purposes of a RIF, the employee will be considered as having encumbered the position at the time the position was abolished.

10. Use of Paid Leave

- a. Employees are required to use all available paid leave (sick, vacation, comp time) during FMLA leave. Any paid leave taken for this reason will be designated as FMLA leave and counted against the amount of FMLA leave available to use in the applicable

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12-month period. Once the employee has exhausted all accrued leave, FMLA is unpaid.

11. Military Family Leave

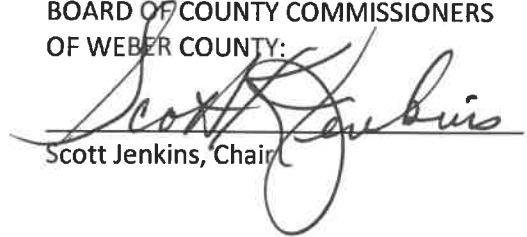
- a. Eligibility, procedures, certification, intermittent leave, and insurance benefits are the same for military family leave as for non-military family leave except for the following:
 - i. Qualifying exigency leave for families of members of the Regular Armed Forces, National Guard, and Reserves when the covered military member is on covered active duty or has been notified of an impending call or order to covered active duty.
 - 1. For members of the Regular Armed Forces, covered active duty is duty during deployment of the member with the Armed Forces to a foreign country.
 - 2. For members of the National Guard and Reserves, covered active duty is duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.
 - 3. An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following:
 - a. short-notice deployment;
 - b. military events and activities;
 - c. child care and school activities;
 - d. care of the military member's parent;
 - e. financial and legal arrangements;
 - f. counseling;
 - g. rest and recuperation;
 - h. post-deployment activities; or
 - i. additional activities that arise out of active duty, provided that the department head and the employee agree, including agreement on timing and duration of the leave.
 - 4. The leave may commence as soon as the individual receives the call-up notice.
 - 5. Son or daughter for this type of FMLA leave is the same as other types of FMLA leave except the son or daughter does not have to be a minor. This type of leave is counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.
 - ii. Military caregiver leave (also known as covered service member leave) to care for an ill or injured service member.
 - 1. This leave may extend to up to 26 weeks in a single 12-month period for an employee who is the spouse, child of any age, parent, or next of kin of a covered service member with a serious illness or injury.
 - 2. A covered service member is either a current member of the Armed Forces or a veteran of the Armed Forces who was discharged within

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- five years before the family member first takes military caregiver leave to care for the veteran.
3. Next of kin is defined as the closest blood relative of the injured or recovering service member, other than the service member's spouse, child, or parent, as governed by federal law.
 4. An eligible employee can take up to 26 weeks for military caregiver leave during a single 12-month period. For this military caregiver leave, Weber County will measure the 12-month period as a rolling 12-month period measured forward from the date this leave is first taken. FMLA leave taken during the 12-month period for other FMLA circumstances will be deducted from the total of 26 weeks available.
 5. If spouses both work for Weber County and each wishes to take leave to care for a covered injured or ill service member, the spouses may only take a combined total of 26 weeks of leave.
- b. HR will require certification of a qualifying exigency for military family leave or serious injury or illness of the covered service member. The employee must respond to such a request within 15 calendar days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided on the [Qualifying Event for Military Family Leave Certification](#) form or the [Serious Injury or Illness of Covered Service Member Certification of Health Care Provider](#).

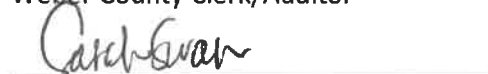
DATED this 18th day of January, 2022.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY:

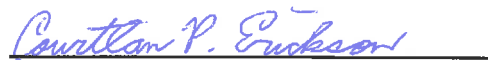

Scott Jenkins, Chair

ATTEST:


Ricky Hatch, CPA
Weber County Clerk/Auditor


Sarah Swan
Human Resources

Approved as to form and legality:


Courtlan Erickson
Deputy County Attorney