



HUMAN RESOURCES DEPARTMENT
FORT BEND COUNTY, TEXAS

Kent M. Edwards, PHR
Director of Human Resources

To: Judge KP George
Commissioner Vincent Morales
Commissioner Grady Prestage
Commissioner Andy Meyers
Commissioner Ken DeMerchant

From: Kathy Novosad
Sr. Human Resources Generalist

Date: July 29, 2020

Subject: Revisions to the Employee Information Manual

Human Resources is submitting revisions to the Employee Information Manual *Policy 704: Family and Medical Leave Act*, for your review and consideration. The policy is revised to further clarify the provisions of the Families First Coronavirus Response Act (FFCRA) with regards to concurrent use of accrued leave.

The FFCRA provides that an employee may take up to 12 weeks of leave to care for a child whose school or place of care is closed for reasons related to COVID-19. The first two weeks of the leave are unpaid, although an employee may, but cannot be required, to substitute paid leave during this period.

Weeks three through twelve of the leave are to be paid at 2/3 of the employee's pay (capped at \$200 per day). During this period, an employee may elect or the employer may require the use of accrued paid leave concurrent with the FFCRA leave. Alternately, the employee and employer may agree to supplement sufficient leave so that the employee receives 100% of their pay for the leave.

The revised policy is written such that an employee will be permitted to supplement the 2/3 pay by using accrued leave so that they can receive 100% of their pay. However, if the employee does not agree to supplement with accrued leave, then they will be required to use any accrued leave concurrent with FFCRA leave during this period. We believe this option results in the fairest application of the FFCRA, by encouraging the employee to use the minimum amount of leave to achieve 100% compensation, while still achieving some draw down of accrued leave balances.

If you have any questions or comments, please contact Kent Edwards at 281-341-8631 or me at 281-341-8624.

704 – THE FAMILY AND MEDICAL LEAVE ACT

Section 704.01 The Family and Medical Leave Act of 1993

Fort Bend County employees, both full time and part time, may be entitled to the protection offered by the Family and Medical Leave Act (FMLA) if the employee has been employed by Fort Bend County for at least twelve (12) months and worked at least 1,250 hours during the twelve months prior to the leave.

The personal staff of Elected Officials, as defined by Section 3(e) of the Fair Labor Standards Act, 29 U.S.C. 203(e), (generally the official's direct reports) are not employees that are covered by the FMLA. However, Fort Bend County shall extend the same benefits, protections and responsibilities of the FMLA to employees in such positions, unless specifically requested otherwise by the employing elected official.

This policy provides a general overview of employer/employee rights and obligations under the FMLA and is not meant to be all inclusive. Contact Human Resources for more information on FMLA. Complete details can be found in the FMLA, 29CFR, Part 825, et seq.

Section 704.02 Leave Entitlement

Basic Family and Medical Leave Entitlement: Eligible employees are entitled to up to 12 weeks of job-protected leave in the event of:

1. The birth of a son or daughter, and in order to care for that son or daughter;
2. The placement of a child with the employee for adoption or foster care;
3. To care for the employee's spouse, child or parent, if the spouse, child or parent has a serious health condition; or
4. A serious health condition that makes the employee unable to perform the functions of the employee's position.

Military Family Leave Entitlement: Eligible employees are entitled to job-protected leave for:

1. Active Duty Leave: Eligible employees whose spouse, son, daughter or parent is in the Armed Forces, National Guard or Reserves and is deployed to a foreign country on active duty status, are entitled to up to 12 weeks of FMLA leave to attend to qualifying exigencies. Examples of qualifying exigencies include but are not limited to: attending military events, arranging for alternative childcare, and post-deployment reintegration briefings.
2. Military caregiver leave: The FMLA provides a leave entitlement of up to 26 weeks for eligible employees to care for a spouse, son, daughter, parent, or next-of-kin who is a member of the military or a covered veteran and has a serious injury or illness incurred in the line of duty while on active duty.

For further information on leave entitlement, please contact the Human Resources Department.

Section 704.03 Definitions of Relationships

The FMLA defines a son or daughter to mean a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in the position of a parent to the child (in loco parentis). Except in the case of Military Family Leave, an eligible child shall be under the age of 18 or age 18 or older if the

child has a mental or physical disability and is incapable of self-care at the time FMLA leave commences. Incapable of self-care means the child is unable to perform 3 or more activities of daily living or incidental activities of daily living.

In the case of Military Family Leave, the child may be of any age.

Parent means biological parent or an individual who stands or stood in *loco parentis* to an employee when the employee was a child. Parent does not include the parent of one's spouse, unless that person acted in *loco parentis* when the employee was a child.

Spouse is defined as a legally recognized marital partner, including common law marriage as recognized by state law.

For purposes of military caregiver leave, next of kin is defined as the nearest blood relative other than the covered service member's spouse, parent, son or daughter in the following order: a) blood relative who has been granted legal custody, b) siblings c) grandparents d) aunts and uncles, and e) first cousins.

At the discretion of the department head or elected official, an employee seeking leave to care for a family member may be required to provide proof of relationship before leave will be approved.

**Section 704.04
Definition of
Serious Health
Condition**

The FMLA defines a serious health condition as an illness, injury, impairment or physical or mental condition that involves one or more of the following:

1. Inpatient care: an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment relating to the same condition.
2. Absence plus treatment: a period of incapacity of more than three consecutive calendar days, including any period of incapacity or subsequent treatment relating to the same condition that also involves (a) treatment two or more times by a health care provider within 30 days of the first day of incapacity, or (b) treatment on at least one occasion which results in a regiment of continuing treatment under the supervision of a health care provider.
3. Pregnancy or prenatal care: any period of incapacity due to pregnancy or for prenatal care.
4. Chronic conditions: Any period of incapacity or treatment for such incapacity due to a chronic serious health condition that (a) requires periodic visits (at least twice a year) for treatment by a health care provider, (b) continues over an extended period of time, and (c) may cause episodic rather than a continuing period of incapacity.
5. Permanent or long-term conditions: a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The patient must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. (Examples include Alzheimer's, severe stroke, terminal cancer)
6. Conditions requiring multiple treatments: any period of absence to receive multiple treatments by a health care provider, where such treatment may prevent a longer period of incapacity. (Examples include restorative surgery after an accident, chemotherapy, radiation, physical therapy for arthritis)

**Section 704.05
Intermittent Leave**

Under certain specific circumstances, FMLA leave may be taken on an intermittent or reduced schedule basis. A schedule for taking such leave shall

be agreed upon to the extent possible by the employee and the elected official or department head, and the employee shall attempt to schedule leave so as to not unduly disrupt the operations of the department. Employees on intermittent leave must adhere to department policies for scheduling, requesting and reporting leave.

Employees will be required to provide certification from a licensed medical practitioner regarding the need for intermittent leave. The certification must include a reasonable estimate of the expected duration and frequency of the need for leave.

**Section 704.06
Definition of 12
Month Period**

Fort Bend County observes a backward rolling calendar year for purposes of FMLA. During any given 12-month period, an employee may qualify for a maximum of 12-weeks of FMLA leave (or 26 weeks in the case of military caregiver leave), regardless of the number of FMLA qualifying events an employee experiences during the 12 month period.

If an employee exhausts their FMLA entitlement in a twelve month period and is unable to return to duty, additional leave may be granted at the discretion of the elected official/department head. The provisions of Policy 706, Leave of Absence, shall apply to any additional leave.

**Section 704.07
When Both
Spouses are County
Employees**

If a married couple are both employed by Fort Bend County, they may take a combined 12 weeks of FMLA leave to care for a newborn or newly placed adopted or foster child, or if both employees seek leave to care for a parent (as defined in Section 704.03) with a serious health condition.

**Section 704.08
Notification
Requirements**

If a leave is foreseeable, employees must give thirty (30) calendar days notice of their intention to take FMLA leave. Otherwise, notice should be given as soon as possible. Employees must follow their department's usual procedures for requesting and reporting leave, and must contact their department on the first workday of each week to report their status and intent to return to work.

If the employee is eligible for FMLA, the elected official/department head or supervisor will notify the employee in writing within five (5) business days (Form 704-A). When the required certification as listed in Section 704.09 is received, the employee shall be notified within five (5) business days if the leave qualifies and will be designated as FMLA leave (Form 704-B).

**Section 704.09
Certification
Requirements**

Fort Bend County requires that employees provide the following documentation and/or certification to qualify for FMLA. An employee who fails to provide a properly completed certification as required within a reasonable time frame, but not less than 15 days, may be denied FMLA leave until proper certification is secured. The following certification requirements apply, and the forms are included at the end of this policy:

1. Form WH-380-E for leave due to pregnancy or an employee's own serious health condition, including intermittent leave.
2. Form WH-380-F for leave to care for a family member with a serious health condition, including intermittent leave. Proof of relationship may also be required.
3. Form WH-384, for Active Duty Leave. In addition, employees should provide documentation from the military verifying the family member will be deployed to a foreign country on active duty.
4. Form WH-385, for Military Caregiver Leave.

Employees must provide certification of fitness to return to duty when returning from FMLA taken for the employee's own serious health condition.

**Section 704.10
Accrued Paid Time
Concurrent with
FMLA Leave**

An employee on FMLA leave is required to concurrently use any accrued paid leave, e.g. vacation, sick, deferred and compensatory time. Paid leave may be used in any order, consistent with County policies, provided that all available accrued paid leave is used prior to the use of unpaid leave. Once accrued paid leave has been exhausted, the remaining leave will be without pay.

**Section 704.11
Medical and Other
Benefits during
FMLA**

Employees taking leave under the FMLA are entitled to continue health benefits during the leave at the same level and terms of coverage as if they had been working throughout the leave. Employees will be required to pay their share of employee and dependent health insurance premiums while on leave.

An employee taking FMLA leave without pay will not accrue vacation or sick time nor receive longevity pay. The period of FMLA leave shall not be treated as a break in service. However, an employee will not receive credit for service for purposes of vesting and retirement eligibility during any month in which no contribution is made to the employee's retirement account.

**Section 704.12
Worker's
Compensation**

It is the policy of Fort Bend County to designate Worker's Compensation leave as FMLA leave if the nature of the injury sustained on the job qualifies as a serious health condition. FMLA shall run concurrent with Worker's Compensation, but this designation shall in no way affect an employee's rights under the Worker's Compensation Act. Accrued paid leave shall not be substituted for any purpose during the period in which the employee is receiving worker's compensation income benefits.

**Section 704.13
FMLA Protection**

An employee of the County who takes an approved FMLA leave of 12 weeks or less (or 26 weeks or less for military caregiver leave), and fulfills the employee's responsibilities and requirements under the act, shall be entitled to return to a position and rate of pay equivalent to that which the employee held prior to the leave. Note that the employee must provide certification of fitness to return to duty when returning from FMLA taken for the employee's own serious health condition.

An employee shall not be subject to discrimination or retaliation for exercising or attempting to exercise their right to FMLA leave. An employee's exercise or attempt to exercise his or her rights under the FMLA shall not be interfered with, restrained or denied, nor shall an employee's use of FMLA leave be used as a negative factor in employment actions, including but not limited to hiring, promotion, transfers, training, disciplinary actions, or other terms and conditions of employment.

**Section 704.14
COVID-19
Extended Leave**

COVID-19 Extended Leave is authorized under the Emergency Family and Medical Leave Expansion Act provisions of the Families First Coronavirus Response Act. This leave is effective beginning April 1, 2020 through December 31, 2020, unless terminated sooner in accordance with law.

Eligible employees are allowed up to 12 weeks of COVID-19 Extended Leave to care for a minor son or daughter if the child's school or place of care has been closed or the child's care provider is unavailable due to an emergency declared by a federal, state, or local authority related to COVID-19 and the employee is unable to work (or telework).

COVID-19 Extended Leave is FMLA leave. An employee may not exceed 12 weeks of total FMLA leave in a 12 month period as discussed above in Section 704-06.

County employees who work as health care providers and first responders, as defined by the Department of Labor for purposes of the Families First Coronavirus Response Act, may be excluded from COVID-19 Extended Leave eligibility at the discretion of the Department Head or Elected Official.

Employees are eligible for COVID-19 Extended Leave after 30 days of service. The first ten days of COVID-19 Extended Leave are unpaid but thereafter will be paid ~~by County~~ at two-thirds of the employee's regular pay (capped at \$200/day). During the unpaid period, employees may, but are not required, to use any applicable leave balances for which they qualify including but not limited to COVID-19 Emergency Paid Sick Leave. Use of paid leave time by the employee during the unpaid portion of leave does not extend the time period beyond the 12 weeks allowed by FMLA or COVID-19 Extended Leave.

During the paid portion of the leave, an employee may elect to supplement sufficient accrued leave in order to receive 100% of their pay for the leave. However, if the employee does not agree to supplement paid leave, the employee will be required to use any accrued paid leave concurrent with COVID-19 Extended Leave. If accrued leave is exhausted, the employee will continue to receive 2/3 pay (capped at \$200 per day) for any remaining COVID-19 Extended Leave taken.

If the employee is able to telework, then there is not a need to use federal leave under this Section. Use of COVID-19 Extended Leave, including a determination that an employee is unable to perform their assigned duties shall be determined by the Department Head or Elected Official. Reasons that an individual may not be able to work remotely include, but are not limited to:

- Job duties are not conducive for remote working;
- No access to laptop, home internet, etc.;
- The employee is sick or caring for a sick family member; and/or
- Child care duties require full attention of employee during working hours

Employees working remotely should do so only under a work plan created by their supervisor. An employee may be reassigned to other duties to facilitate working remotely, and if so, the employee cannot refuse the reassignment in order to take COVID-19 Extended Leave.

Any eligible, unused leave available under this Section does not carry over after December 31, 2020.

Policy Approved and Adopted By:
 Fort Bend County Commissioners Court
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