

**GRAND FORKS COUNTY
POLICY MANUAL**

POLICY NO. 104-13

Eff. 2/21/12

**FAMILY MEDICAL LEAVE ACT
(FMLA)**

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It is the responsibility of the Department Manager to communicate family medical leave eligibility to employees within their department. It is the responsibility of the employee, however, to ensure their own compliance with FMLA provisions.

I. GENERAL OVERVIEW

A. Amount and Purposes of FMLA Leave

The federal Family and Medical Leave Act (FMLA) entitle eligible, qualified employees to a 12-week, job-protected leave of absence within a rolling 12-month period for the following purposes:

- the birth of, or to care for, a newborn child;
- the placement of a child for adoption or foster care or to care for such child;
- to care for a spouse, child, or parent with a serious health condition;
- because of a serious health condition that causes an employee to be unable to perform one or more of the essential functions of his/her job; or
- a qualifying exigency which arises due to the spouse, child or parent of an employee being called into active military service in a foreign country from the Reserves, the National Guard, retired status from either the Reserves or regular career military service, or in the course of regular military service.

Eligible, qualified employees are only entitled to use a total of 12 weeks of FMLA leave during a 12-month period for any or all of these five purposes, regardless of how many of these five purposes arise during this same period.

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For purposes of determining how much FMLA leave an employee has available to take at any given time for any of these five purposes, the Department Manager will look back to see how much FMLA leave an employee has taken during the 12-month period immediately before the date the employee's current requested leave is to begin. The method to compute the amount of FMLA available to the employee will be the look-back method.

The FMLA also entitles eligible, qualified employees to one 26-week, job-protected leave of absence during a single 12-month period, which shall be measured going forward from the first day an employee takes leave to care for an injured member of the regular Armed Forces, the Reserves, the National Guard who sustains a serious illness or injury in the line of duty while on active duty but who is not either discharged, permanently disabled or retired from the military or which is aggravated in the course of such active duty or a veteran. For veterans, such injuries or illnesses may manifest themselves either before or after the service member becomes a veteran. For purposes of this section, "veteran" means "a person who served in the active military, Naval or Air Service, and who was discharged or released there from under conditions other than dishonorable within five years of when the need for leave arises." Leave to care for such veterans also can only be taken within five years of their discharge/release from the military.

In order to qualify for FMLA leave to care for an injured service member or veteran, the employee must be the spouse, parent, child or next of kin of the service member or veteran. Eligible, qualified employees who also need to take FMLA leave in connection with one of the other five purposes which are listed above during the same 12-month period that they are taking FMLA leave to care for an injured service member or veteran will be limited to a total of 26 weeks of FMLA leave during this 12-month period.

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B. Eligibility for FMLA Leave

In order to be eligible for FMLA leave, an employee

- **Must be employed with Grand Forks County for at least 12 months. (The 12 months do not have to be consecutive, so it is possible for a former employee to become re-employed and be eligible for FMLA leave if his/her total period of employment is 12 months or more.) and**
- **Must have worked for Grand Forks County for at least 1,250 hours during the 12-month period immediately prior to the beginning of an FMLA leave.**
- **Time an employee is employed by a temporary employment agency at Grand Forks County counts toward the employee's 12-month and 1,250-hour requirements for FMLA eligibility.**

C. Defining Terms Used in this FMLA Policy

An employee requesting FMLA leave may be required to provide documentation showing that the necessary relationship exists in accordance with these definitions and that the FMLA leave request is related to the condition or event described by the employee in his/her FMLA leave request.

- **“Spouse” means a (heterosexual) husband or wife.**
- **“Parent” means a biological parent, an adoptive parent, a stepparent, or one who stood in the place of a parent when the employee was a child, but does not include in-laws.**

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- **“Child” means a biological or adopted child and also includes an employee’s foster child, stepchild or legal ward or a child for whom the employee stands in the place of a parent. A child usually must be under age 18 for purposes of FMLA leave (except in the case of FMLA leave relating to military service) but can be 18 years of age or older if he/she is unable to care for his/her daily needs because of a mental or physical disability as this term is defined by the Americans with Disabilities Act.**

- **A “serious health condition” is any illness, injury, impairment or physical or mental condition that involves any of the following:**
 - (a) An overnight stay in a hospital, hospice or residential medical care facility and any subsequent treatment relating thereto;**
 - (b) Incapacity to work or perform regular daily activities for more than three consecutive calendar days and treatment by or under the supervision of a health care provider two or more times, or once which results in a regimen of continuing treatment under the supervision of a health care provider (the first treatment must be received within seven days of the beginning of the period of incapacity and any second treatment must be received within thirty days of the beginning of the period of incapacity;**
 - (c) Incapacity to work or perform regular daily activities for any period of time due to pregnancy or prenatal care;**
 - (d) Incapacity to work or perform regular daily activities for any period of time related to a chronic serious health condition that requires periodic treatment by or under the supervision of a health care provider over an extended period of time, such as epilepsy, diabetes or asthma (chronic serious health conditions must be monitored by at least two visits to a health care provider each year);**

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(e) Incapacity to work or perform regular daily activities that is permanent or long-term due to a condition which cannot be cured or eliminated but is continually monitored by a health care provider, such as end-stage terminal cancer, a severe stroke or Alzheimer's disease; or

(f) Incapacity to work or perform regular daily activities for any period of time related to the receipt of or recovery from multiple treatments for restorative surgery after an accident or other injury or for a condition that would be likely to cause a period of incapacity of more than three consecutive calendar days if such treatments were not administered, such as chemotherapy for cancer, dialysis for kidney disease or physical therapy for severe arthritis.

- A “qualifying exigency” is

- (a) Any reason related to a sudden deployment for which seven or fewer calendar days' notice is given (leave taken under this item can only be used during the seven-calendar-day period beginning with the date the military service member receives notice of an impending call or orders to report for active duty);

- (b) An official ceremony, program or other official military or Red Cross sponsored event which is related to the active duty or call to active duty status of a covered military member;

- (c) To make alternative childcare or school arrangements necessitated by the covered military member's active duty or call to active duty status;

- (d) To make financial or legal arrangements necessitated by the covered military member's active duty or call to active duty status;

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- (e) To attend counseling provided by someone other than a health care provider for oneself (such as the covered military member or a child of the covered military member) provided that the need for such counseling is necessitated by the covered military member's active duty or call to active duty status;
 - (f) To spend time with a covered military member who is on short-term temporary, rest and recuperation leave during a period of deployment (leave taken under this item is limited to a period of five days per each rest and recuperation leave);
 - (g) To attend arrival ceremonies or other post-deployment events or make arrangements related to the death of a covered military member (leave taken under this item can only be taken during the 90 days immediately following the end of the covered military member's active duty status); or
 - (h) Any other event which is agreed upon between a specific employee and Grand Forks County which is necessitated by the covered military member's active duty or call to active duty status (any such agreements must relate to the timing and duration of the leave in addition to the type of event).
- For purposes of injured service member/veteran care leave, "next of kin" means
 - (1) Any blood relative designated in writing by the service member/veteran; or if such designation has not been made in order below --
 - (2) A blood relative who has been named the legal guardian or custodian of the service member/veteran by a court or by law; or
 - (3) The service member/veteran's siblings; or
 - (4) The service member/veteran's grandparents; or
 - (5) The service member/veteran's aunts and uncles; or
 - (6) The service member/veteran's first cousins.

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- For purposes of injured service member or veteran leave, a “serious illness or injury” means a serious illness or injury which is incurred in the line of duty while on active duty or which existed prior to the active duty service but was aggravated thereby and for which the service member or veteran is undergoing medical treatment, recuperation, or therapy; or otherwise is in outpatient status assigned to a military medical treatment facility or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients; or (for current service members) otherwise is on the temporary disability retired list or may be rendered medically unfit to perform the duties of the member’s office, grade, rank or rating. For veterans, this medical treatment, recuperation or therapy must occur within five years of becoming a veteran.

D. Period for Taking FMLA Leave

FMLA leave may be taken either continuously or on an intermittent (reduced work/part-time) basis. However, if FMLA leave is taken on a planned intermittent (reduced work/part-time) basis, an employee may be transferred temporarily to an available alternative position that better accommodates this type of leave. In addition, if FMLA leave is taken for the birth of a child, to care for a newborn or for the placement of a child for adoption or foster care, such leave must be taken at one time -- not on an intermittent basis -- and it must be concluded within one year of the birth or placement of the child.

Intermittent FMLA leave cannot be taken in increments smaller than one hour.

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E. If Both Spouses are Employed by Grand Forks County

When both spouses work for Grand Forks County and are both eligible for FMLA leave, they are limited to a combined total of 12 weeks of leave during a 12-month period if the leave is taken (1) for the birth or care of a newborn child, (2) for the placement of a child for adoption or foster care and care of the child after placement or (3) to care for a parent who has a serious health condition. Both spouses then would be eligible to use any remaining FMLA leave time for other FMLA-qualifying purposes. If one or both spouses also are separately eligible for additional leave under another federal or state law, each eligible spouse may take the additional leave for which they qualify under that law. An example may be helpful here.

Example: Spouse A and Spouse B both request FMLA leave to care for their new baby. Neither spouse is eligible for any other type of leave under federal or state law. Spouse A requests and takes 4 weeks of FMLA leave to care for the new baby. Spouse A then would have 8 weeks of FMLA leave left to use for other FMLA-qualifying purposes. Spouse B also could take 8 weeks of FMLA leave to care for the new baby, since Spouse A only used 4 weeks of FMLA leave for this purpose. Spouse B then would have 4 weeks of FMLA leave left to use for other FMLA-qualifying purposes.

Both spouses also would be limited to a combined total of 26 weeks of FMLA leave during a 12-month period in the event part of this leave is taken in connection with any of the (3) purposes described above along with caring for an injured service member/veteran during the same 12-month period.

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II. APPLYING FOR FMLA LEAVE

A. Employee Notice

Employees must give the Department Manager at least thirty (30) days' advance notice if their need for FMLA leave is foreseeable. In circumstances where such advance notice cannot be given because the need for leave arises because of a sudden, unexpected medical emergency or other unplanned and unforeseeable event, notice should be given to the Department Manager as soon as possible and within whatever regular timeframes are set by the employee's department regarding providing notice of an absence, unless compliance with such timeframes is not possible. If the employee fails to comply with their department's regular notice requirements, it will be the employee's responsibility to show that such compliance was not possible; otherwise the absence will not be FMLA-certified.

Whenever the need for FMLA leave is foreseeable, the employee must work in advance with their Department Manager to schedule this leave in such a way that it does not disrupt business operations to the extent it is reasonably possible to do so. If the employee's requested FMLA leave will cause a business disruption, the Department Manager may require the employee to reschedule the leave if it is medically possible to do so.

Employees giving notice of the need for FMLA leave do not have to refer specifically to the "FMLA," but they must give sufficient information to let the Department Manager know that their leave is being requested in connection with an FMLA-qualifying event as these are defined in sections I. A. and C. above. This notice requirement applies regardless of whether the employee already has been approved for FMLA leave and is giving notice of the need to be off from work in connection with this prior approval or if the employee is making an initial request for FMLA leave.

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B. Certifications

To support a request for FMLA leave, the employee must then provide the Department Manager with the requested certification form or other requested documentation within 15 calendar days of the request for this certification form/other documentation. Blank medical certification and other required forms are available from the Department Manager. If the certification form or other requested documentation is not completed and provided to the Department Manager by the employee within this 15-calendar-day time period, the employee's request for FMLA leave may be denied and, if so, any absences the employee has related to his/her request for leave will be treated as they normally would be under Grand Forks County's regular attendance policies.

Employees who request FMLA leave during more than one 12-month period will be asked to provide a new medical certification form to cover each new 12-month period, regardless of whether their leave request is related to the same illness or injury as was certified for FMLA leave in a past 12-month period.

In certain instances, clarifications and even second and third opinions may be requested by CHA relating to a medical certification form. Failure of an employee (or the employee's ill or injured family member or chosen physician) to cooperate in the clarification and/or second/third opinion process also will be grounds for the denial of a request for FMLA leave.

C. Designation of FMLA Leave

Employees will be notified in writing that their request for FMLA leave has been granted. This and any other written notices related to the employee's FMLA leave will be sent to the employee's last known home address if the employee has not returned to work by the time each notice is sent.

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III. HOW FMLA LEAVE COORDINATES WITH OTHER LEAVES

A. Interaction of Unpaid FMLA Leave and Paid Leaves

FMLA leave is unpaid leave. However, there are certain circumstances in which employees may utilize paid leave in conjunction with their FMLA leave. It is the policy of Grand Forks County that employees (FML) will be required to use applicable sick leave and vacation leave prior to using leave without pay with one exception; an employee has the option to retain up to 40 hours of their vacation leave in their account for their return to work. An employee wishing to retain any vacation hours in their account shall communicate this request in their FMLA request.

B. Interaction of FMLA Leave and Other Types of Leave

Employees who qualify for more than one type of leave (for instance, FMLA leave and maternity leave or FMLA leave and leave covered by STD or workers' compensation benefits) must use FMLA at the same time as the other types of leave. In other words, employees cannot "save" FMLA leave until after their maternity leave, vacation, STD or workers' compensation covered leave ends; their FMLA leave will run at the same time as these other types of leave if the employee qualifies for both FMLA leave and one or more of these other types of leave.

C. Interaction of FMLA Leave and Other Laws

Employees will be considered for both FMLA and any applicable state family/medical leave at the same time by the Department Manager. Generally, employees who qualify for more than one type of leave will receive the benefits, protections and rights of whichever type of leave provides the more favorable treatment to them. However, leave provided by state or other leave laws will run together at the same time as FMLA leave for any periods an employee qualifies for both types of leave, unless the state or other leave law expressly provides otherwise. Information regarding how another law affects FMLA leave, as applicable, will be provided to employees as part of their final FMLA designation notice.

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D. Pregnancy-related leave, which may include different kinds of leave;

1. **Maternity Leave** - For a pregnancy and delivery, sick leave is allowed until a doctor's release to return to work is issued. If the mother chooses to remain on FML after that time, she may use other forms of leave, or unpaid leave, until the expiration of 12 weeks.
2. **Paternity Leave** – The time taken off by a spouse to assist with the care and well-being of a mother and newborn, when a serious medical condition does not exist. Employee is eligible to use up to 80 hours of family sick leave per Policy No. 104-05.

IV. HOW FMLA LEAVE AFFECTS YOUR JOB

A. Status Reports/Recertifications

While an employee is taking FMLA leave, the employee may be asked to provide periodic status reports to the Department Manager regarding his/her general status and intention to return to work. These reports must be provided to the Department Manager in the form and within the time period stated in such requests.

Employees taking FMLA leave for any medically-related reason aside from injured service member/veteran care also will be required to provide re-certifications from the health care provider who has certified their leave when their original certification forms expire, if patterns or other circumstances which bring their continued need for leave into question arise, and in any event every six (6) months. (If no specific ending date is specified on the original certification form, the employee may be asked to provide a recertification form every thirty (30) days as well.)

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An employee on FMLA leave must notify the Department Manager as soon as practicable upon learning that the status of his/her serious health condition (or other situation, if the leave is not related to the employee's own serious health condition) has changed such that either more or less FMLA leave time is needed than initially was requested. Failure to provide notice of such changes could jeopardize the employee's employment (if he/she does not report being able to return to work earlier than anticipated upon receiving medical advice to do so) and/or cause portions of the employee's leave not to be designated as FMLA leave.

B. Returning to Work after an FMLA Leave

Upon returning to work after an FMLA leave, an employee will be given the same job he/she had at the time of beginning the leave or an equivalent job, unless the employee has been designated by Grand Forks County as a "key employee" for FMLA purposes. (Employees will be notified of this designation in their final designation notice if it applies to them.)

If an employee does not return to work by the end of his/her FMLA leave, the right to return to his/her former job or an equivalent one will be lost, even if the employee continues to be on another type of leave after his/her FMLA leave ends, unless job protection also is a requirement of the other type of leave. Questions regarding what other types of leave include job protection should be directed to the Director of Administration. Employees on leave should not assume that just because they are on another approved type of leave that their jobs are being held until they return from leave.

Employees who take FMLA leave in connection with their own serious health condition(s) will be required to provide documentation from their treating physician stating that they have been medically released to perform all of the essential functions of their job (as these functions are defined by the employee's job description) before they will be permitted to return to work.

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For employees who do not return to work after the maximum twelve (12) [or as applicable twenty-six (26)] weeks of FMLA leave, their employment may be terminated, unless they qualify for some other type of leave under state and/or federal law.

C. Seniority, Evaluations, Merit Increases and Bonuses

Unpaid periods of an FMLA leave will not count toward determining an employee's seniority. Employees also will not continue to accrue vacation and/or sick leave while they are on unpaid FMLA leave.

If an employee returns to work by the end of their approved FMLA leave period, their annual evaluation will be done at its regular time and any merit increase awarded based on the evaluation will not be pro-rated based on time off from work for FMLA leave. If the employee missed an annual evaluation while out on FMLA leave, his/her evaluation will be completed so as to become effective by the end of the first pay period following the employee's return to work. If an employee is not able to return to work by the end of his/her FMLA leave period (but remains on some other type of leave), his/her annual evaluation may be delayed by the period they have been off from work (excluding the FMLA leave period) so that it will cover a full evaluation period.

An employee who is on, or who has taken, FMLA leave during a period on which a bonus is based will only receive the bonus if he/she meets the objective criteria for the same, even if the reason for the employee's failure to meet these criteria is due to the fact that he/she was out on FMLA leave.

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D. Company Sponsored Benefit Plans

Employee health insurance coverage will be maintained for employees who are on FMLA leave during the leave at the same level such coverage was provided at the time the employee went out on leave. However, employees on FMLA leave will need to pay all health and life insurance premiums to Grand Forks County by the first of each month in order to maintain such coverage. The employee may choose to be billed directly by NDPERS life. If the employee fails to pay premiums when due the employee will have to reapply for life insurance with medical underwriting.

When an employee is on FML without pay, NDPERS contributions made by Grand Forks 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.

No other employee benefits will be maintained for employees who are on FML leave unless expressly stated otherwise in the employee's final FML designation notice.

V. QUESTIONS?

Questions about FMLA leave or how FMLA leave affects other laws, employee benefits or company policies should be directed to the Director of Administration.