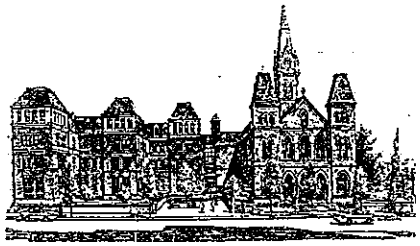
BLAIR COUNTY POLICY



TITLE: FAMILY AND MEDICAL LEAVE POLICY

BLAIR COUNTY POLICY NO.: 303

POLICY APPROVAL BY:

COMMISSIONERS:	Initials	Date
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1.0 POLICY

It is the policy of Blair County to comply with Family Medical and Leave Act of 1993 and the Military Family Leave as provided for in the National Defense Authorization Act signed into law on January 28, 2008. FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following:

(1) For incapacity due to pregnancy, prenatal medical care, or child birth;
(2) To care for the employee's child after birth, or placement for adoption or foster care;
(3) To care for the employee's spouse, child, or parent, who has a serious health condition;
(4) For a serious health condition that makes the employee unable to perform the employee's job; or
(5) When a parent, child or spouse is on or called to active duty status, the employee shall be entitled to FMLA leave to handle any qualifying exigency arising from the call to active duty status.

Employees who have a spouse, child, or parent who incurs a serious injury or illness while on active duty in the Armed Forces shall also be entitled to up to 26 weeks of leave under this policy pursuant to the National Defense Authorization Act.

2.0 REFERENCES

29CFR825 Family and Medical Leave Act of 1993
National Defense Authorization Act/Military Family Leave
Request for Leave Form
Certification of Health Care Provider for Employee's Serious Health Condition
Certification of Health Care Provider for Family Member's Serious Health Condition
Notice of Eligibility and Rights and Responsibilities
Designation Notice

3.0 RESPONSIBILITY

All determinations concerning whether leave requested by an employee is a qualified leave under the Family and Medical Leave Act will be made by the Human Resources Department.

4.0 DEFINITIONS

4.1. Eligible employee is defined as an employee who has worked for Blair County at least 12 months and has provided at least 1,250 hours of service in the 12 months preceding a request for leave.

4.2. Family leave is defined as a leave brought about by the birth or placement of a child for adoption or foster care or the care of a newborn within one year of birth or placement.

4.3. Medical Leave is defined as a leave brought about by the employee's own serious health condition or the serious health condition of the employee's spouse, child, or parent.

4.4. Military leave is defined as a leave brought about by active duty or notification of an impending call to active duty status of an employee's spouse, son, daughter, or parent, in support of a contingency operation. FMLA also includes a special leave entitlement that provides up to 26 weeks of leave to care for a spouse, child, or parent who incurs a serious injury or illness while on active duty in the Armed Forces.

4.5. Intermittent Leave is defined as leave taken in separate blocks of time due to a single qualifying condition.

4.6. Reduced Leave Schedule means that the employee works fewer hours than usual.

4.7. Child includes a biological, adopted, or foster child, a stepchild, or a legal ward who is: (a) under age 18; (b) 18 years of age or older and incapable of self-care because of a mental or physical disability.

4.8. Spouse is defined as "husband or wife".

4.9. Parent is defined as the biological parent of the employee, or an individual who treated the employee as a son or daughter when the employee was under age 18.

4.10. Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves any one or more of the following:

1) **Incapacity and treatment.** A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(a) Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
(b) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.
(c) The requirement in paragraphs (1)(a) and (b) of this section for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.

2) **Pregnancy or prenatal care.** Any period of incapacity due to pregnancy, or for prenatal care.
3) **Chronic conditions.** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
   (a) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;
   (b) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
   (c) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
4) **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 employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
5) **Conditions requiring multiple treatments.** Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:
   (a) Restorative surgery after an accident or other injury; or
   (b) A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).
6) Absences attributable to incapacity under paragraph (2) or (3) of this section qualify for FMLA leave even though the employee or the covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days.

4.11 Qualifying Exigency includes the following:

1) *Short-notice deployment*—any issue that arises from the fact that a covered military member is notified of an impending call or order to active duty seven (7) or less

calendar days prior to the date of deployment. Leave taken for this purpose can be used for a period of seven (7) calendar days beginning on the date the covered military member is notified of an impending call or order to active duty.

2) *Military events and related activities*—leave is permitted for the employee to attend any official ceremony, program, or event sponsored by the military and to attend family support and assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered family member.
3) *Childcare and school activities*—leave under this section may be taken:
   (a) To arrange for alternative childcare when the active duty status of a covered military member necessitates a change in the existing childcare arrangement.
   (b) To provide childcare on an urgent, immediate need basis when the active duty status of a covered military member necessitates (but not on a routine, regular, or daily basis).
   (c) To enroll the child in or transfer the child to a new school or day care facility when the active duty status of a covered military member necessitates.
   (d) To attend meetings with staff at a school or a day care facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, when the active duty status of a covered military member necessitates.
4) *Financial and legal arrangements*—leave provided to make or update financial or legal arrangements to address the covered military member's absence while on active duty such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System, obtaining military identification cards or preparing or updating a will or living trust. It also allows leave to act as the covered military member's representative before a federal, state, or local agency for the purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on active duty.
5) *Counseling*—leave is provided to attend counseling provided by someone other than a healthcare provider for oneself, for the covered military member, or for their biological, adopted, foster, or step child or their legal ward.
6) *Rest and recuperation*—provides leave for eligible employees to take up to 5 days of leave for spending time with a covered military member who is on short-term, temporary rest and recuperation leave during the period of deployment.
7) *Post-deployment activities*—leave will be granted to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following the termination of the covered military member's active duty to address issues that arise from the death of a covered military member's active duty, such as meeting and recovering the body of the covered military member and making funeral arrangements.
8) *Additional activities agreed upon by employee and employer.*

5.0 REQUEST FOR FAMILY OR MEDICAL LEAVE

5.1. An employee must complete a Request for Leave form. This form must be submitted to the Human Resources Department and will be used to determine the employee's eligibility for FMLA leave.

(1) A decision will be made by HR as to employee eligibility as defined above.
(2) The Employer will notify the employee of their eligibility for FMLA leave and their Rights and Responsibilities within five (5) days of the employee's FMLA request.
(3) If the Employer determines that the employee is ineligible for FMLA leave for any reason the Employer will notify the employee in writing of the reasons why they are ineligible.

5.2. Upon a determination by the Human Resources Department of eligibility for FMLA leave, an employee must have the Certification of Health Care Provider completed and returned within fifteen (15) calendar days or leave may be denied or delayed.

(1) If the employee fails to provide a certification, the Employer will deny FMLA leave until proper certification is provided.
(2) If the certification is incomplete or insufficiently completed (vague, ambiguous, or non-responsive) the Employer will notify the employee and provide them with seven (7) days to address the certification's deficiency or deficiencies. If the employee fails to cure the deficiencies within the allotted time period, the Employer reserves the right to deny the request for FMLA leave.
(3) A certification for leave to care for a family member or covered servicemember must so state and shall include an estimate of the amount of time the employee will be needed to care for the family member or covered servicemember and a statement describing why it is necessary for the employee to provide care for the family member or covered servicemember.
(4) All certification forms shall include a listing of the essential functions of the employee's position so that the healthcare provider may render a specific opinion regarding the employee's ability to perform these functions with or without accommodation
(5) A second opinion may be required at the employer's request.
(6) If required, a second opinion will be at the employer's expense.
(7) The Employer may require a third opinion where the first opinion and the second opinion are conflicting. The third opinion, if required, is non-binding.
(8) The Employer will make any determination granting leave based upon the medical certification which the Employer determines is the most credible.
(9) When a medical condition lasts longer than a year, the Employer will request a new medical certification each leave year.
(10) Depending upon the reason for leave, the County may request a recertification every 30 days and only in connection with an absence by the employee, unless:
    (a) The employee requests an extension of leave.

(b) Circumstances described by the previous certification have changed significantly.
(c) The employer receives information that casts doubt upon the continuing validity of the certification.

(11) The Employer may request a recertification every six (6) months in conjunction with an absence for a condition with a duration described as "lifetime" or "unknown."

(12) Where the medical certification provides a minimum duration of incapacity specifically within the certification, the Employer shall not ask for recertification until the minimum duration specified has passed.

(13) All initial certifications and recertifications are at the employee's expense.

5.3. Employees who take FMLA leave must timely notify the Employer of their need for FMLA leave. Employees must provide 30 days advance notice of the need for FMLA leave when the need is foreseeable. When 30 days notice is not possible, or the approximate timing of the need is not foreseeable, employees must provide the Company notice of the need as soon as practical under the facts and circumstances of the particular case.

If the employee fails to explain the reasons for the FMLA leave, the leave may be denied. When employees seek leave due to FMLA-qualifying reasons for which the Company has previously provided FMLA-protected leave, they must specifically reference the qualifying reason for the leave or the need for FMLA leave.

Where leave is foreseeable, failure to provide advance notice of a need for family or medical leave may result in the postponement of the requested leave for 30 days from the date of notice to the County.

Where leave is unforeseeable, notice must be provided as soon as practical under the facts and circumstances of the particular case. Typically, notification the next business day will be considered practical. If notice is not provided as soon as practical, the Employer will delay the implementation of FMLA leave may be denied or delayed in accordance with law.

5.4. Intermittent leave requires a 30-day notice when leave is foreseeable, such as doctor's appointment and treatment plans.

5.5. An employee must consult with his or her supervisor and make a reasonable effort to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the health care provider. If an employee who provides notice of the need to take FMLA leave on an intermittent basis for planned medical treatment neglects to consult with the employer to make a reasonable attempt to arrange the schedule of treatments so as not to unduly disrupt the employer's operations, the employer will require the employee to attempt to make such arrangements, subject to the approval of the health care provider.

5.6. An employee must use all available compensable time provided by the County (or any available compensable time as required by Union contract) concurrent with approved FMLA leave prior to taking unpaid family or medical leave provided by this policy.

5.7. All qualifying Worker's Compensation leave and medical leave will be counted towards annual leave entitlement.

5.8. Employees are responsible for, and are required to comply with all rules and policies regarding absences, calling off, requesting time off, and punctuality. Failures to do so will subject the employee to disciplinary action unless extenuating circumstances are present justifying the employee's failure to comply with the Employer's rules and policies.

5.9. The Employer reserves the right to have a member of the Human Resources Department contact the employee's healthcare provider in order to seek clarification of a submitted certification or recertification as necessary. At no time will this contact be made by the employee's direct supervisor.

6.0 HOW THE MEDICAL LEAVE MAY BE TAKEN

The 12 weeks (60 days) maximum of leave may be taken continuously, or when medically necessary and certification and notice of the need are provided, on an intermittent or reduced leave schedule.

Leave because of the birth or placement of a child must be taken within 12 months of the birth or placement and cannot be taken intermittently.

The number of workweeks of leave for husbands and wives who are both employed by the County is limited to an aggregate of 12 work weeks if the leave is taken for the birth of a son or daughter, for the placement of a child with the employee through adoption or foster care, or to care for a sick parent.

If an employee plans to take a medical leave intermittently or on a reduced leave schedule, it may be necessary for the County to move the employee to an alternative position that better accommodates the recurring periods of leave. If such a transfer is necessary, neither the employee's pay nor benefits will be affected.

7.0 HOW LEAVE IS CALCULATED

When leave is requested, the County will use the "rolling" year method of calculation, which measures backward from the beginning date of the requested leave. Any FMLA taken during the preceding 12-month period will be counted toward the employee's 12-week entitlement to future leave.

8.0 BENEFITS DURING FAMILY MEDICAL LEAVE

Group insurance benefits will continue on the employee during a period of family or medical leave provided the employee makes the necessary employee contribution. In the event the employee does not return at the end of the leave, other than for the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under this policy, or for other circumstances beyond the control of the employee, the County may recover the premiums paid during the leave.

Employees must continue to make their share of the premium payments for health insurance to maintain health benefits while on leave. Payments are due at the same time as they would be if made by payroll deduction and must be paid directly to the Employer.

The Employer's obligation to maintain health care coverage ceases if the employee's premium payment is more than 30 days late. If the employee's payment is more than 15 days late, the Company will send a letter notifying the employee that coverage will be dropped on a specified date unless the employee's premium payment is received before that date.

Benefit accruals for leave time, such as vacation or sick leave, will be suspended during the leave and will resume upon return to active duty.

9.0 RETURN FROM FAMILY MEDICAL LEAVE

Upon return from a family or medical leave under this policy, the employee is entitled to be restored to the same position or one with equivalent pay, benefits, and other terms and conditions of employment.

An exception to the employment restoration provisions of this policy may be made if the employee on leave is a key employee of the County and restoring employment of the employee would result in substantial grievous and economic injury to the corporation. In this situation, the employee will be notified of the County's intent to designate employee as a key employee and will be given an opportunity to return to work without taking leave.

Upon return from a medical leave caused by the employee's own serious health condition, the employee may be required to provide certification from his/her physician that he/she may resume the duties of his/her job.

Employees, who would lose their position without regard to their use of FMLA leave, such as in a general layoff, also would not be eligible for reinstatement.

10.0 QUALIFYING EXIGENCY LEAVE

The normal 12 workweeks of FMLA leave are available to help family members of the National Guard and Reserves manage their affairs while the member is on active duty in support of a contingency operation. These 12 workweeks may be used for any qualifying

exigency arising out of the fact that a covered military member is on active duty or called to active duty status in support of a contingency operation.

No leave is available under this provision for employees whose family member is in the Regular Armed Forces. The employee must have a spouse, son, daughter, or parent called to active duty in order to qualify for leave under this provision. This leave is only available for Federal calls to Active Duty for members of the National Guard and Reserves. State calls to Active Duty are not covered under this provision.

11.0 MILITARY CAREGIVER LEAVE

Family members of "covered servicemembers" are able to take up to 26 workweeks of unpaid leave in a single 12-month period in order to care for a "covered servicemember" with a serious illness or injury incurred in the line of duty on active duty in all United States Military Branches, including the National Guard and Reserves.

A "covered servicemember" is a member of the Armed Forces as defined herein who is undergoing medical treatment, recuperation, or therapy, or is otherwise in outpatient status (as defined in the Family Medical Leave Act), or is otherwise on the temporary disability retired list, for an injury or illness incurred in the line of duty on active duty.

The spouse, son, daughter, parent, or next of kin as defined in the Family Medical Leave Act are permitted to take military caregiver leave if the covered servicemember suffers from an injury or illness incurred by the member of the Armed Forces in the line of duty while on active duty that may render the member unfit to perform the duties of the members office, grade, rank, or rating.

12.0 RECORDS

All records will be confidential and maintained in the HR Department.

12.0 QUESTIONS

If you have any questions regarding this FMLA policy, please contact the Human Resources Department.

The FMLA makes it unlawful for employers to: (1) interfere with, restrain, or deny the exercise of any right provided under the FMLA; or (2) discharge or discriminate against any person for opposing any practice made unlawful by FMLA or involvement in any proceeding under or relating to FMLA.

If employees believe their rights have been violated, they should contact the Human Resources Department immediately. The Company will investigate any FMLA complaint and take prompt and appropriate remedial action to address and/or remedy any FMLA violation.