LENOIR COUNTY GOVERNMENT

FAMILY AND MEDICAL LEAVE ACT (FMLA) INSTRUCTIONAL GUIDE

DEPARTMENT OF HUMAN RESOURCES
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This Instructional Guide addresses basic steps for requesting Family and Medical Leave (FMLA). It is not a contract. It is not considered a substitute for Federal or State laws, rules, and regulations concerning FMLA nor is it the final authority on FMLA. Any and all provisions of this Guide are subject to change at any time without prior notice.

The Guide was prepared by the Lenoir County Human Resources Department. Questions regarding this Guide, its application, or provisions of the FMLA generally, should be directed to the Human Resources Department at 252-527-0313.

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I. INTRODUCTION

The federal Family and Medical Leave Act (FMLA or the Act) took effect on August 5, 1993. The most recent changes to the FMLA became effective January 16, 2009 and October 28, 2009. The Act is intended to balance the demands of the workplace with the needs of families by allowing leave for certain medical reasons, promoting the stability and economic security of families, and promoting national interests in preserving family integrity. It was intended that the Act accomplish these purposes in a manner that accommodates the legitimate interests of employers and employees.

II. EMPLOYEE RESPONSIBILITIES

A. NOTICE REQUIREMENTS

Whenever the necessity for a FMLA absence is foreseeable, the FMLA requires that the employee provide not less than 30 days notice before the absence is to begin. As a general rule, 30 days notice shall be required in cases involving the birth, foster care, or adoption of a child or planned medical treatment for an employee or an employee's family member's serious health condition, or the planned medical treatment for a serious injury or illness of a covered servicemember. In those cases where 30 days notice is not practicable, or the foreseeable leave is due to a qualifying exigency, an employee, or (in situations where the employee cannot reasonably be expected to request the leave personally) a representative of the employee is required to give notice as soon as both possible and practical, which should normally be either the same day or the next business day. Employees must also follow the usual and customary call-in procedure for reporting an absence, including any requirement to contact a specific individual.

When the need for leave is not foreseeable, an employee must provide notice as soon as practicable under the facts and circumstances of the particular case. The employee should provide notice within the time prescribed by the usual and customary notice requirements applicable to such leave. ***(Complete the FMLA Request Form, LC-001)***

B. MEDICAL CERTIFICATION REQUIRED

When requested by the Department Manager, the employee is responsible for providing the Department Manager with complete and sufficient medical certification of a serious health condition by having the health care provider complete the appropriate sections of the applicable FMLA Form ***(WH-380E, WH-380F, WH-384 or WH-385)***. The employee must provide the requested FMLA Health Care Provider information within 15 calendar days after the request, unless it is not practicable. Any costs incurred will be at the employees' expense. An employee may be required to report periodically to the appointing authority on his or her status and intention to return to work.

C. NOTICE OF CHANGED CIRCUMSTANCES

If the employee needs to extend the length of the requested FMLA absence, or if the absence as originally requested is no longer necessary, an employee shall, if the changed circumstances are foreseeable, provide notice within two business days of the changed circumstances. ***(Complete Notice of change in leave plans, LC-002)***

III. MANAGEMENT RESPONSIBILITIES

A. RESPONSIBILITIES OF MANAGERS AND SUPERVISORS

The Department Manager is responsible for obtaining and evaluating information to determine whether a FMLA absence can be used. **In all circumstances, it is Lenoir County Governments responsibility to designate leave as "FMLA qualifying," and to give prompt notice of the designation to the employee.** Department Managers and Immediate Supervisors are the persons who must secure the information from employees necessary to render a determination that the leave is or is not "FMLA qualifying." With certain exceptions, the appointing authority's determination must be rendered within five business days of learning the reasons for the request. Although employees are required to provide enough information to establish their FMLA absence eligibility, their requests for time off does not have to specifically request FMLA leave. Each agency must obtain the required information and decide whether a FMLA absence is appropriate.

Department Managers and Immediate Supervisors will be the individuals most often approached by employees seeking to take time off. To

ensure compliance, managers and supervisors must act quickly to inquire further and gather required information to respond appropriately to these requests. The following FMLA Guide has been developed to ensure that when an employee makes a request for time off, a manager or supervisor will:

1. ask appropriate questions about the reasons for the employee's time off;

2. recognize that the requested time off, whether paid or unpaid, can be counted as a FMLA absence;

3. comply with applicable department policies regarding forwarding information about the absence to the County Human Resources Department;

4. promptly inform the employee regarding whether the requested time off, whether paid or unpaid, can be counted as an FMLA absence;

5. inform the employee of his/her rights and obligations while the employee is on a FMLA absence; and

6. preserve management's right to provide only as much leave as is required by law.

1. ELIGIBILITY AND RIGHTS & RESPONSIBILITIES NOTICE

Within five (5) business days of an employee request for FMLA leave, or when management acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employee must be given the *Notice of Eligibility and Rights & Responsibilities* ***(Form WH-381)***, absent extenuating circumstances. The notice must state whether the employee is eligible for FMLA leave, and, if not, state at least one reason why (*see* 29 CFR § 825.300(b) for specific requirements). The notice must also detail the specific expectations and obligations of the employee and explain any consequences of a failure to meet those obligations (*cf.*: Form WH-381 and 29 CFR § 825.300(c)). These include:

(a) notification that all eligible leave shall be counted against the employee's entitlement;

(b) the requirements for medical certification to document a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or a call to active duty status, and any consequences for failing to do so;

(c) any requirement for the employee to pay health insurance premiums, including how to make payments and the consequences of failing to make payments;

(d) any requirement that the employee present a fitness for duty certificate upon returning to work, and if the certification is to specifically address the essential duties, must include a list of the essential functions; and where reasonable job safety concerns exist, may require certification before the return from intermittent FMLA leave;

(e) the employee's right to receive the same or an equivalent position after returning from the FMLA absence;

(f) the employee's potential obligation to pay health insurance premiums that the employer paid during an unpaid FMLA absence if the employee fails to return to work after such absence;

(g) the requirement to run FMLA leave concurrent with the employee's available and appropriate paid leave, (compensatory, sick or vacation leave); and

(h) the employee's status as a "key employee" and the potential consequence that restoration may be denied, explaining the conditions required for such a denial.

2. DESIGNATION NOTICE

The department manager is responsible in all circumstances for designating leave as FMLA-qualifying. Within five (5) business days of obtaining enough information to determine whether leave is being taken for a FMLA-qualifying reason, the appointing authority or designee must notify the employee of the determination regarding designation. The *Designation Notice* ***(Form WH-382)*** should be used for this purpose. The designation need only be made once for each FMLA-qualifying reason per applicable 12-month period, regardless of whether the leave will be taken in a continuous block or intermittently. If the leave is not designated as FMLA-qualifying because it does not meet the legal requirements, the form need not be used, and may be in the form of a simple written statement; which must include notice if:

(a) that paid leave will be substituted for unpaid FMLA leave;

(b) that the employee will be required to present a fitness-for-duty certification, which must include the employee's ability to perform the essential functions of the position; and

(c) the amount of leave counted against the employee's FMLA leave entitlement. If it is not possible to provide the amount of time (such as in the case of unforeseeable intermittent leave), the agency must provide notice of the amount of leave counted, upon the request of the employee, but no more frequently than once in 30 days, and only if FMLA leave was taken during that time.

B. MEDICAL CERTIFICATION

1. CERTIFICATION OF HEALTH CARE PROVIDER

An employee requesting a FMLA absence for the serious health condition of a family member, the employee's own serious health condition or serious injury or illness of covered service member for Military Family Leave shall be provided a Certification of Health Care Provider Form ***(WH-380E, WH-380F, WH-384 or WH-385)*** as soon as a request for leave is submitted or within five business days. The employee must return the completed certification to the Employer within 15 calendar days after the employee's request, unless it is not practicable. The certification shall include:

(a) medical facts supporting certification (a diagnosis is not required by the FMLA);

(b) date of commencement and duration of absence;

(c) additional treatments required or need for intermittent absence (a diagnosis is not required by the FMLA); and

(d) ability of employee to perform essential functions of the job.

Note: The FMLA Form (WH-380E, WH-380F or WH-385), if properly completed by a health care provider, should contain the required information. *If the form is not properly completed, the form will be returned to the employee or health care provider and may delay the approval of the FMLA absence.*

EMPLOYEE RIGHTS AND RESPONSIBILITIES
UNDER THE FAMILY AND MEDICAL LEAVE ACT

Basic Leave Entitlement

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- for incapacity due to pregnancy, prenatal medical care or child birth;
- to care for the employee's child after birth, or placement for adoption or foster care;
- to care for the employee's spouse, son, daughter or parent, who has a serious health condition; or
- for a serious health condition that makes the employee unable to perform the employee's job.

Military Family Leave Entitlements

Eligible employees whose spouse, son, daughter or parent is on covered active duty or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.*

***The FMLA definitions of "serious injury or illness" for current servicemembers and veterans are distinct from the FMLA definition of "serious health condition".**

Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

Eligibility Requirements

Employees are eligible if they have worked for a covered employer for at least 12 months, have 1,250 hours of service in the previous 12 months*, and if at least 50 employees are employed by the employer within 75 miles.

***Special hours of service eligibility requirements apply to airline flight crew employees.**

Definition of Serious Health Condition

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.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.

Use of Leave

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Employee Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and generally must comply with an employer's normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave.

Employer Responsibilities

Covered employers must inform employees requesting leave whether they are eligible under FMLA. If they are, the notice must specify any additional information required as well as the employees' rights and responsibilities. If they are not eligible, the employer must provide a reason for the ineligibility.

Covered employers must inform employees if leave will be designated as FMLA-protected and the amount of leave counted against the employee's leave entitlement. If the employer determines that the leave is not FMLA-protected, the employer must notify the employee.

Unlawful Acts by Employers

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FMLA section 109 (29 U.S.C. § 2619) requires FMLA covered employers to post the text of this notice. Regulation 29 C.F.R. § 825.300(a) may require additional disclosures.

For additional information:
1-866-4US-WAGE (1-866-487-9243) TTY: 1-877-889-5627
WWW.WAGEHOUR.DOL.GOV

U.S. Department of Labor | Wage and Hour Division

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