

## CHAPTER IV (BENEFITS)

### PR-411 Family and Medical Leave Act

- A. Purpose:** It is the policy of Yuma County to comply with the provisions of the Family and Medical Leave Act of 1993 and to provide eligible employees up to 12 weeks of leave within a 12-month period for certain family and medical reasons. The County is a covered employer under the Family and Medical Leave Act of 1993, Public Law 103-3 [H.R.1]; February 5, 1993, 107 Stat. 6 to 107 Stat. 29.

An employee's rights under the act are set forth below in summary format. The full text of the FMLA is available from the Human Resources Department for review by any employee, and the full text and any statutes or rules, which implement the FMLA, shall govern any employee's rights not withstanding any provision of these Personnel Rules, which may be inconsistent with the FMLA.

- B. Eligible employees are Yuma County employees who have worked for Yuma County for twelve months and 1,250 hours during the 12 months preceding the date for the requested leave. For purposes of calculating the 1,250 hour requirement, the number of hours worked does not include vacation, sick leave, holidays, compensatory time off, any unpaid leave hours or periods of layoff. Overtime hours however are included. The determining factor is whether the time is considered hours of work under the federal Fair Labor Standards Act (FLSA).**

**C. Procedure:**

Types of Permissible FMLA Leave: An eligible employee may request FMLA leave for one or more of the following reasons.

1. Family Leave:

To care for the employee's child after birth, or placement for adoption or foster care;

2. Medical Leave:

To care for the employee's spouse, son or daughter, parent and/or individual who stands or stood in *loco parentis*; who has a serious health condition; or for a serious health condition that makes the employee unable to perform the employee's job.

3. Military leave:

Qualifying Exigency (QE) leave. It is available to spouses, a son or daughter, or parent of a service member on duty or being called to active duty which creates a qualifying event as a result of that duty. QE leave can only be used by spouses, sons or daughters, or parents of members of the reserves and National Guard and certain retired members of the military—not active members of the regular military or armed services.

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Servicemember leave/ Military Caregiver leave. This is leave that is used for the care of a servicemember who has suffered a serious injury or illness in the line of active duty. It can be taken by a spouse, parent, son, daughter, or next of kin. For the purposes of service member leave/military caregiver leave, the term "next of kin" is defined as the service members' closest blood relative outside of his spouse, parent, or child. If one blood relative has been given legal custody of the service member, then that person would be the next of kin. In all other cases, next of kin would be considered in the following order: Siblings, grandparents, aunts or uncles, and first cousins. If more than one person is equal in this line of succession (e.g., two sisters), then all of the equal blood relations (both sisters, for example) will qualify as the servicemember's next of kin, and all of them can take leave under this provision of the FMLA. If the servicemember has designated a blood relative to be his next of kin, then that person will be considered the servicemember's only next of kin for purposes of this FMLA provision.

Employees shall be required to use all applicable leave prior to placement in a leave without pay status.

### D. Calculation of Leave:

1. An employee may be allotted up to 12 weeks of paid or unpaid leave for an FMLA qualifying reason within a specified 12-month period. The specified 12-month period will be determined on a rolling 12 months basis. To calculate the specified 12-month period, the department must determine whether the employee has used any FMLA approved leave during the preceding 12 months.  
If the employee has previously used some, but not all, of the 12-week allotment, the employee may be permitted to use the remainder of the allotment. However, the employee will only be permitted to use the allotment as long as the FMLA qualifying reason exists.
2. Example: A covered employee requests 12 weeks of FMLA leave to begin June 1, 2009 for a permissible Medical Leave reason. The employee had previously used six weeks of approved FMLA leave from July 11, 2008 through August 19, 2008 for a permissible Family Leave reason. Thus, the employee only has six weeks of FMLA allotment remaining because the approved Family Leave used during the preceding 12 months counted towards the employee's FMLA allotment. However, the employee may utilize the remaining six-week allotment as long as a qualifying medical leave reason exists.
3. An exception to the above example is if both spouses are employed by Yuma County, then the 12 weeks of Family Leave is limited to a combined total (between the spouses) of 12 weeks during the 12 months following the birth or placement of the child.
4. Servicemember leave/Military Caregiver leave differs from all other types of FMLA leave in that it can last up to 26 weeks (taken in one block or intermittently). This type of leave must be used during a single 12-month period. The 12-month period for this kind of leave begins when the employee takes the first day of the caregiver leave.

All types of FMLA leave taken by an employee during the same 12-month period are added together for purposes of computing the 26-week period. For example, if an employee had already taken 12 weeks of FMLA leave to care for a newborn or their own serious health condition, the employee would only have 14 weeks remaining to use for injured servicemember leave.

- E. Serious Health Condition:** A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:

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1. Hospital Care: Inpatient care (i.e. an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to the inpatient care; or,
2. Absence Plus Treatment: A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves either; (1) treatment two or more times by a health care provider, by a nurse or physician's assistant under the direct supervision of a health care provider or by a provider of health care services (i.e. physical therapist) under orders of, or referral by, a health care provider; or (2) treatment by a health care provider on at least one occasion which results in a regime of continuing treatment under the supervision of the health care provider.
3. Pregnancy: Any period of incapacity due to pregnancy and pre-natal care.
4. Chronic Conditions Requiring Treatments: A chronic condition which (1) requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under the direct supervision of a health care provider; (2) continues over an extended period of time (including recurring episodes of a single underlying condition) and (3) may cause episodic rather than a continuing period of incapacity (i.e. asthma, diabetes, epilepsy, etc)
5. Permanent/Long-term Condition requiring supervision: A period of incapacity that 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. (i.e. Alzheimer's, a severe stroke, or the terminal stages of a disease)
6. Multiple Treatments (Non-Chronic Conditions): 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 the orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy) and kidney disease (dialysis)

**F. Employee Request for FMLA Leave:** A leave of absence may be counted toward an employee's FMLA allotment even if they do not specifically request FMLA, so long as the reason for the leave qualifies under the FMLA and the leave is properly documented by the Appointing Authority and Human Resources. However, to be assured of certain protections offered by the FMLA during the leave of absence, employees must request FMLA leave.

1. An employee must submit to Human Resources a request for a leave of absence not less than 30 days prior to the requested start of the leave.
2. If the reason for the leave could not have been foreseen 30 days in advance, the employee must submit the request for leave within five (5) days after the need for leave is discovered.
3. If an employee is incapacitated, a family member or other responsible party may submit the request for leave on behalf of the employee.

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An employee request for a leave of absence may be verbal or in writing, and should include applicable documentation verifying the need for the leave. Provisional approval of leave should be granted pending receipt of more complete documentation, if original information is unavailable, incomplete, or inadequate.

**G. Required Documentation:** The documentation that may be required from an employee will depend upon whether the request is for Family Leave or Medical Leave.

1. **Family Leave:** If the request for leave is due to the anticipated birth of a child (and sufficient documentation has not already been provided by the employee), Human Resources may request a letter from the employee's Health Care Provider (or similar documentation) demonstrating the anticipated or actual date of birth. If the leave is due to the placement of a child through adoption or foster care, Human Resources shall request a copy of a letter from the adoption or foster care agency placing the child in the parent's care and/or custody or similar document demonstrating the date of placement.
2. **Medical Leave:** If the leave is due to a serious health condition (and if sufficient documentation has not already been provided by the employee), Human Resources shall request the completion of a Certification of Health Care Provider form within 15 calendar days of the date of the request. (The Certification of Health Care Provider form is the only acceptable form that may be used by Human Resources to obtain information from the employee's health care provider.) In the event a medical emergency or other unforeseeable event prevents the completion of the Certification of Health Care Provider form, the employee must contact Human Resources as soon as practicable to request an extension.

**G. Approval of FMLA Leave:**

If sufficient documentation has been provided by the employee to determine whether the requested leave qualifies under the FMLA, Human Resources should immediately notify the employee in writing that the leave is being approved as FMLA leave.

1. If the employee has not submitted sufficient documentation to make the determination, Human Resources shall immediately notify the employee in writing that the leave is being approved as FMLA leave subject to the receipt and review of the Certification of Health Care Provider form.
2. Human Resources shall provide the employee with a copy of the Certification of Health Care Provider form to assist the Health Care Provider in completing the required analysis. The Certification of Health Care Provider form and attachments should be given or sent directly to the employee for the employee to submit to his/her own Health Care Provider.
3. It is the employee's responsibility to return the Certification of Health Care Provider form within 15 calendar days after receipt of the notice of eligibility and rights and responsibilities FMLA form. Refusal to provide the requested certification within the designated time may result in the denial of leave and/or disciplinary action, up to and including dismissal. Additional medical clearance may be required upon return to work if the leave was approved due to the serious health condition of the employee.
4. Upon receipt of the completed Certification of Health Care Provider form, Human Resources should review the information provided to determine whether the reason for the leave constitutes a serious health condition. If Human Resources determines that the information provided in the Certification of Health Care provider is sufficient to conclude that the employee's condition is a serious health condition, Human Resources will notify the employee in writing that the leave has been given final approval.

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The final approval letter should also specifically indicate the start date of the FMLA leave and anticipated return to work date. If an employee disagrees with the start date established by Human Resources, the employee must notify Human Resources of the dispute as soon as possible.

5. If the information provided in the Certification of Health Care Provider is not sufficient to conclude that the employee's condition is a serious health condition, Human Resources may either request that the employee obtain clarification from the employee's Health Care Provider (within seven days to correct incomplete or insufficient certifications) or may request that the employee receive an additional examination by another Health Care Provider designated by Human Resources. The additional examination shall be at the employer's expense. In the event that the additional examination concludes that the employee's condition is not a serious health condition, Human Resources may request that the employee receive a third examination by a Health Care Provider designated by an agreement with Human Resources and the employee. The third examination shall be at the employer's expense, and shall be conclusive.
  6. If an employee fails to obtain and return the required documentation to Human Resources within 15 days, Human Resources will notify the employee of the omission, and require submission of the documentation. By the fifteenth (15) day, if Human Resources determines that the documentation is insufficient, the employee will then have seven (7) days to provide sufficient documentation. An employee who fails to submit the required supporting documentation within the required seven-day (7) time frame may be subject to disciplinary action by the Agency Head up to and including dismissal. Additionally, the provisional approval of the employee's leave may be revoked, and the employee may be deemed absent without authorized leave.
- I. Designation of Leave as FMLA Leave:** Human Resources may designate (in writing) a qualifying paid or unpaid leave of absence as being counted toward an employee's 12 week allotment under the FMLA, even if the employee has not requested an FMLA leave. In order to do so, however, Human Resources must obtain the appropriate documentation to demonstrate that the leave was taken for an FMLA qualifying reason. It is recommended that whenever an employee has been absent for three (3) or more full working days due to a possible FMLA qualifying reason, Human Resources should designate the leave as FMLA leave in writing, pending receipt of appropriate documentation. Human Resources determines whether the reasons for the leave qualify under the FMLA.
- J. Requests for Intermittent or Reduced Scheduled Leave:** Approval of an employee's request for leave on an intermittent or reduced scheduled basis (rather than consecutive days) will depend upon whether the request is for Family Leave or Medical Leave.
1. If the request is for Family Leave, Human Resources may permit the employee to take the leave on an intermittent or reduced schedule basis (including absences of less than a full day). However, if Human Resources determines that the leave will not be approved on an intermittent basis, it does not mean that Human Resources may deny an otherwise qualifying leave request altogether.
  2. If the request is for Medical Leave, Human Resources must approve the leave on an intermittent or reduced schedule basis if the use of intermittent or reduced schedule leave is determined to be medically necessary by an appropriate Health Care Provider. However, even where the use of intermittent or reduced schedule leave is determined to be medically necessary by an appropriate Health Care Provider, Human Resources may work with the employee to determine the best means of scheduling of the intermittent or reduced schedule leave based upon the operational needs of the organization.

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3. If leave is approved on an intermittent or reduced schedule basis, only the time not actually worked by the employee will be counted toward the employee's allotment under the FMLA. The time not worked will be calculated on an hourly basis. Time not worked as part of a part-time light duty assignment may also be counted towards an employee's FMLA allotment.
4. An employee's request for intermittent or reduced schedule leave must be made in the same manner and within the same time restrictions as a request for FMLA leave on a consecutive day basis.

**K. Use of Paid Sick and Annual (vacation) Leave during FMLA Leave:** If FMLA is approved due to Family Leave; employee shall first use available compensatory leave, then sick leave, and then annual (vacation) leave.

However, if the reason for the leave qualifies as Family Leave or medical leave, the following applies:

### **Family Leave:**

1. When an employee has accumulated compensatory time, such time shall be utilized prior to any utilization of vacation leave.
2. Annual (Vacation) leave includes all periods of approved absence with pay that are not chargeable to another category of leave.
3. An employee may use personal necessity leave towards family leave.

### **Medical Leave:**

1. An agency head shall approve sick leave requested as a part of Family and Medical leave.
2. If sick leave is not available, the employee may use compensatory leave, if available, until such leave is exhausted, and then may use annual (vacation) leave.
3. After all sick leave is exhausted, employee shall use annual (vacation) and/or compensatory leave, or has exhausted annual (vacation) and compensatory leave, the employee shall be placed on leave without pay (See PR-413).

Documentation of the amount of FMLA leave used by an employee is Human Resources and the Agency's Head responsibility. Human Resources does track and maintain records relating to FMLA leave. Thus, if any portion of the FMLA leave is to be without pay, the leave must be entered as "family leave" (unpaid) on the timecard.

**L. Continuation of Benefits:** During the period of the FMLA leave, the employee's health insurance coverage will be maintained at the same level and under the same conditions that coverage would have been provided the employee had remained on the job continuously. The employee's share of any health insurance premium and any other employee-paid premiums will continue to be the employee's responsibility. In the case of unpaid leave, the employee should contact the Benefits Representative to make arrangements for payment of any benefits that would normally have been paid through payroll deduction.

**M. Employment upon Return 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. Human Resources and the Agency Head may hire an individual in a temporary status to replace the employee on FMLA leave, subject to fiscal considerations.

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

**N. Records and Confidentiality:** Human Resources shall maintain the following records detailing FMLA leaves of absence:

1. Documentation of the employee's request for Family or Medical Leave.
2. Written records showing the date that the employee's verbal or written request was received.
3. Documentation of approval or denials of FMLA leave, including start date, and anticipated return date, for any approved leave.
4. Dates FMLA leave was taken, including dates and hours taken, if leave was taken in increments of less than one full day.
5. Employee medical certification records: (note: Retention of all medical information must be done in compliance with the Americans with Disabilities Act's confidentiality requirements and HIPAA). All employee medical information that contains specific information regarding an employee's current diagnosis, prognosis, medical condition or medical history must be maintained in a separate, sealed and locked file, apart from general personnel files in Human Resources. Absent extraordinary circumstances, immediate supervisors will only be informed regarding an employee's restrictions related to their Essential Functions and/or necessary accommodations.
6. Documentation regarding any dispute between the employee and Human Resources or Agency Head regarding the designation of the leave as FMLA leave.
7. Written documentation indicating that the employee has been offered FMLA leave and either chooses not to take it, and/or terminates as an alternative to the FMLA leave.

The Agency Head will maintain time sheets and other related payroll, benefits and earning records.

**O. Enforcement:** The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.

1. An eligible employee may bring a civil action against an employer for violations.
2. 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.
3. An employee may grieve any violation of the FMLA which directly affects the employee; this right to grieve, however, shall not limit in any manner any right the employee may have under Federal or State law to bring civil action for any violation.

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