



Family Medical and Paid Leave Policy

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**1.0 Purpose**

The Family and Medical Leave Act of 1993 was passed by Congress to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity; to minimize the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons; and to promote the goal of equal employment opportunity.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. If you have any questions, concerns, or disputes with this policy, you must contact the Human Resources Director in writing.

**2.0 Applicability**

This policy applies to all Buncombe County departments and eligible employees. To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

- a. The employee must have worked for the County for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer’s intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
- b. The employee must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. The 1,250 hours do not include time spent on paid or unpaid leave. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

- c. The employee must work in a worksite where 50 or more employees are employed by Buncombe County within 75 miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

### 3.0 Policy

#### a. Type of Leave Covered

To qualify as FMLA leave under this policy, the leave must be for one of the reasons listed below (see definitions below):

- i) The birth of a child and in order to care for that child.
- ii) The placement of a child for adoption or foster care and to care for the newly placed child.
- iii) To care for a spouse, child or parent with a serious health condition.
- iv) The serious health condition of the employee. An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of their position.

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees with questions about what illnesses are covered under this FMLA policy or under the County's sick leave policy are encouraged to consult with the Benefits Administrator.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the County will designate all related leave taken as qualifying FMLA leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

- v) Qualifying exigency leave for families of members of the National Guard or Reserve or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.
  - (1) An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following:
    - 1. short-notice deployment
    - 2. military events and activities
    - 3. child care and school activities
    - 4. financial and legal arrangements

5. counseling
6. rest and recuperation
7. post-deployment activities
8. additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserve, or a member of the Armed Forces, the National Guard or Reserve who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserve, or members on the permanent disability retired list.

- a. To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the covered service member. The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.
- b. Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.
  - (1) An employee whose son, daughter, parent or next of kin is a covered service member may take up to 26 weeks of leave in a single 12-month period to care for that service member. Next of kin is defined as the closest blood relative of the injured or recovering service member.

**b. Amount of Leave**

An eligible employee can take up to 12 weeks for the FMLA circumstances (a) through (e) above under this policy during any 12-month period. The County will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the County will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time. **The FMLA Combined Leave Provision does not apply for married couples working for the County.**

An eligible employee can take up to 26 weeks for the FMLA circumstance (f) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the County will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave

already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

### **Employee Status and Benefits During Leave**

While an employee is on leave, the County will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the County will require the employee to reimburse the County the amount it paid for the employee's health insurance premium during the leave period.

Under current County policy, the employee pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Finance Department by the 1st day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The employer will provide 15 days' notification prior to the employee's loss of coverage.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay their portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

### **c. Employee Status After Leave**

An employee who takes leave under this policy will be asked to provide a fitness for duty (FFD) clearance from a health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one that is virtually identical in terms of pay, benefits and working conditions. The County may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to business operations. Key employees will be given written notice at the time FMLA leave is requested of their status as a key employee.

### **d. Certification for the Employee's Serious Health Condition**

The County will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition.

The County may directly contact the employee's health care provider for verification or clarification purposes using a health care or HR professional. The County will not use the employee's direct supervisor for this contact. Before the County makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the County will obtain the employee's permission for clarification of individually identifiable health information.

The County has the right to ask for a second opinion if it has reason to doubt the certification. The County will pay for the employee to get a certification from a second doctor, which the County will select. The County may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the County will require the opinion of a third doctor. The County and the employee will mutually select the third doctor, and the County will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

**e. Certification for the Family Member's Serious Health Condition**

The County will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition.

The County may directly contact the employee's family member's health care provider for verification or clarification purposes using a health care or HR professional. The County will not use the employee's direct supervisor for this contact. Before the County makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the County will obtain the employee's family member's permission for clarification of individually identifiable health information.

The County has the right to ask for a second opinion if it has reason to doubt the certification. The County will pay for the employee's family member to get a certification from a second doctor, which the County will select. The County may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the County will require the opinion of a third doctor. The County and the employee will mutually select the third doctor, and the County will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

**f. Certification of Qualifying Exigency for Military Family Leave**

The County will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave.

**g. Certification for Serious Injury or Illness of Covered Service member for Military Family Leave**

The County will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service member.

**h. Recertification**

The County may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of their leave. Otherwise, the County may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The County may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

**i. Requesting FMLA Leave**

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the Benefits Administrator or Benefits Specialist. Within five business days after the employee has provided this notice, the Benefits representative will complete and provide the employee with the DOL Notice of Eligibility and Rights.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day the need for leave is discovered or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the County's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

**j. Designation of FMLA Leave**

Within five business days after the employee has submitted the appropriate certification form, the Benefits Representative will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice.

**k. Intent to Return to Work from FMLA Leave**

On a basis that does not discriminate against employees on FMLA leave, the County may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

**l. Intermittent Leave or a Reduced Work Schedule**

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period).

The County may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the County and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the County before taking intermittent leave or working a reduced-hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

**m. Paid Parental and Family Leave**

i. Eligibility: To be eligible for Paid Parental and Family Leave, the employee must be a qualified employee under the Family Medical Leave Act (FMLA) and on approved FMLA Leave for one of the following reasons:

1. To bond with a newborn child within one year of birth; or to bond with a child following adoption or foster care placement within one year of adoption or placement. Part-time and Temporary employees are not eligible for Paid Family Leave.
2. To care for a spouse, child or parent with a serious health condition (described below).

ii. Paid Leave Benefit:

1. Compensation. Paid Parental and Family Leave will provide salary continuation of:
  - a. 100% for Parental Leave.
  - b. 100% for Family Care Leave.
2. Duration.
  - a. Up to eight (8) weeks for Parental Leave.
  - b. Up to six (6) weeks for Family Care Leave.

- i. Employees may use this time in a single continuous block or intermittently. Paid Parental and Family Leave runs concurrent with FMLA Leave.
    - ii. The amount of paid Parental and Family leave for any one person shall not exceed the employees approved FMLA period.
      1. If the employee has used unpaid Family Medical Leave, they will only be eligible to use the remaining balance of their leave to apply to this paid benefit.
  3. Considerations:
    - a. All leave must be completed within twelve (12) months of the qualifying event.
    - b. If the employee is using consecutive days of this approved leave, they may not use vacation, sick leave, or holiday pay.
    - c. If the employee is utilizing their paid Parental and Family Leave intermittently, they may use their accrued but unused leave in accordance with the Personnel Ordinance.
    - d. Employees may not receive Temporary Disability Income (TDI) while receiving Paid Family Leave. An employee may receive Paid Parental and Family Leave prior to obtaining TDI or after TDI ends.
    - e. If an employee receives Paid Parental and Family Leave, they will not be available to sell back vacation time for 12-months from the end of the approved leave.
    - f. Employees receiving Paid Parental and Family Leave may not work off duty employment.
- n. Other Leave – Paid Time Off (Sick, Vacation, Compensatory Time) or Unpaid Leave**

All approved periods of paid leave and periods of leave without pay beyond the allotted Paid Parental and Family Leave benefit (including leave without pay) count towards the workweeks to which the employee is entitled. The employee must use all paid vacation, personal or compensatory leave prior to being eligible for unpaid leave. An employee who is using military FMLA leave for a qualifying exigency must use all paid leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid leave (as long as the reason for the absence is covered by Buncombe County's sick leave policy) prior to being eligible for unpaid leave.

#### 4.0 Policy Non-Compliance

Employees willfully violating the terms and conditions of this policy may be subject to appropriate disciplinary action, up to and including dismissal.

#### 5.0 Audit

All policies for Buncombe County may be subject to audit or review as outlined in the [Internal Auditor's Statement](#). The Internal Auditor's Statement is incorporated into all County policies through this reference.

#### 6.0 Definitions

- a. Parent** - A biological, adoptive, step or foster father or mother or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child. This term does not include parents "in-law".

- b. Child** – A son or daughter who is:
  - i. under 18 years of age, or
  - ii. is 18 years of age or older and incapable of self-care because of a mental or physical disability and who is:
    - i. a biological child,
    - ii. an adopted child,
  - iii. a foster child (a child for whom the employee performs the duties of a parent as if it were the employee’s child),
  - iv. a step-child (a child of the employee’s spouse from a former marriage),
  - v. a legal ward (a minor child placed by the court under the care of a guardian), or
  - vi. a child of an employee standing in loco parentis.
- c. Spouse** - A couple who is recognized under state law for purposes of marriage in the State in which the marriage was entered into. This definition includes an individual in a same-sex or common law marriage that was entered into in a State that recognizes such marriages. In the case of a marriage entered into outside of any State, the marriage is recognized if the marriage is valid in the place where entered into and could have been entered into in at least one State.
- d. Incapable of Self Care** – the individual requires active assistance or supervision to provide daily self-care in several of the “activities of daily living” (ADLs) or “instrumental activities of daily living” (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one’s grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living including cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephone and directories, using a post office, etc.
- e. Serious Health Condition** – A condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.
- f. Workweek** – The number of hours an employee is regularly scheduled to work each week, including holidays.
- g. Reduced Work Week** – A work schedule involving less hours than an employee is regularly scheduled to work.
- h. Intermittent Work Week** – A work schedule in which an employee works on an irregular basis and is taking leave in separate blocks of time, rather than for one continuous period of time, usually to accommodate some form of regularly scheduled medical treatment due to a single qualifying reason.
- i. 12-Month Period** – The 12-month period measured forward from the date any employee’s family and medical leave begins.
- j. Holidays** – Holidays occurring during a FMLA period of a full week count toward the FMLA leave entitlement. Holidays occurring during a partial week of FMLA leave do not count against the FMLA leave entitlement, unless the employee was otherwise scheduled and expected to work during the holiday.
- k. Agency Closures** – If the agency closes for more than one full day, any subsequent days that the agency is closed do not count against the employees’ FMLA leave entitlement.
- l. Worker’s Compensation Leave** – If an employee is out on workers’ compensation leave drawing temporary total disability, the time away from work is not considered as a part of the FMLA entitlement.

- m.** Son or daughter of a covered service member – means the covered service member 's biological, adopted, or foster child, stepchild or legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age.
- n.** Parent of a covered service member – means a covered service member's biological, adoptive, step or foster parent, or any other individual who stood in loco parentis to the covered service member. This term does not include parents in law.
- o.** Next of kin of a covered service member – is the nearest blood relative, other than the covered service member's spouse, parent, son or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin. For example, if a covered service member has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered service member's next of kin. Alternatively, where a covered service member has siblings and designates a cousin as their next of kin for FMLA purposes, then only the designated cousin is eligible as the covered service member's next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered service member pursuant to § 825.122(k).
- p.** Covered active duty – for members of a regular component of the Armed Forces, means duty during deployment of the member with the Armed Forces to a foreign country.
- q.** Covered Service Member – a member of the Armed Forces (including a member of the National Guard or Reserve) 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 a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserve) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.
- r.** Serious Injury or Illness – in the case of a member of the Armed Forces (including a member of the National Guard or Reserve), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating; in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserve) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of their office, grade, rank or rating. Outpatient status, with respect to a covered service member, means the status of a member of the Armed Forces assigned to either a military

medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.