**513 FAMILY AND MEDICAL LEAVE**

The Madison County Board of Developmental Disabilities will comply with Public Law 103-3, *Public Law 110-181*, Family and Medical Leave Act of 1993, to provide family and medical leave as specified in the legislation. Eligible employees will be provided up to 12 weeks of unpaid leave in connection with specific qualifying events. Eligible employees may take up to 26 weeks of unpaid leave to care for a covered servicemember. Generally, employees will be provided employment in an equivalent position with equivalent conditions of employment upon return from family or medical leave. The Board will maintain records of utilization of family or medical leave per the requirements of the Department of Labor.

**A. Qualifying Events for Basic Leave Entitlement.**

In order to be entitled to take the appropriate amount of family and medical leave, one of the following "qualifying events" must occur:

1. Incapacity due to pregnancy, prenatal medical care or child birth;
2. Care for the employee’s child after birth, or placement for adoption or foster care;

3. Care for the employee’s spouse, son, daughter 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

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 three (3) consecutive calendar days combined with at least two (2) 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.

**B. Military Family Leave Entitlements**

Eligible employees with a spouse, son, daughter, or parent on “covered active duty” or call to covered active duty status may use their 12-week leave entitlement to address certain qualifying exigencies. An employee’s spouse, son, daughter, or parent is on “covered active duty” when he or she is either a) on duty as a member of a regular component of the Armed Forces and deployed with the Armed Forces to a foreign country under a call or order to active duty, or b) on duty as a member of a reserve component of the Armed Forces and deployed to a foreign country under a call or order to active duty in support of a contingency operation. Qualifying exigencies to manage the servicemember’s affairs are described on the Department of Labor form [Certification of Qualifying Exigency for Military Family Leave](http://www.dol.gov/esa/whd/forms/WH-384.pdf) and include: 1) Short notice deployment; 2) Military events and related activities; 3) Childcare and school activities; 4) care of the military member’s parentwho is incapable of self-care; 5) Financial and legal arrangements; 6) Counseling; 7) Rest and recuperation; 8) Post-deployment activities; and 9) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

A qualified eligible employee may take leave to care for a covered servicemember who has suffered a serious injury or illness in the line of active duty or who has had an existing condition aggravated by military service (“military caregiver leave”). A covered servicemember means (1) a current member of the Armed Forces, National Guard or Reserves who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness incurred in the line of duty; 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 injury or illness for which the covered servicemember requires military caregiver assistance may manifest itself before or after the member officially became a “veteran.” Military caregiver leave also applies to pre-existing medical conditions that were aggravated by the servicemember’s active duty service in the military. T**he FMLA definitions of “serious injury or illness” for current servicemembers and veterans are distinct from the FMLA definition of “serious health condition”.**

An employee who has a qualified family relationship with a covered servicemember may take up to 26 weeks of leave during a single 12-month period. A qualified family relationship is a spouse, parent, son or daughter, or next of kin. The leave entitlement described in this paragraph applies on a per-covered servicemember, per-injury basis, such that an eligible employee may be entitled to take more than one leave if the leave is to care for a different covered servicemember or to care for the same servicemember with a subsequent serious illness or injury, but the employee is limited to a total of 26 weeks of military caregiver leave in any single 12-month period. No more than 26 weeks total of FMLA leave may be taken within any single 12-month period to care for a covered servicemember.

An employee may take FMLA leave for up to 12 weeks for a Qualifying Event in the same 12-month period in which an FMLA leave is taken to care for a covered servicemember.

The Board will provide the employee with a copy of the Department of Labor Form [Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave](http://www.dol.gov/esa/whd/forms/WH-385.pdf) or [Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave](http://www.dol.gov/whd/forms/wh385V.pdf) to be completed by the employee and an authorized military health care provider of the covered servicemember. The employee may present certain military certifications such as “Invitational Travel Orders” or “Invitational Travel Authorizations” for purposes of certification that must be accepted by the Board.

If the certification is incomplete or unclear, the employee is to be given seven (7) additional calendar days to provide more complete information. Recertifications and second or third opinions are not permitted in connection with respect to leave to care for a covered servicemember.

The Superintendent or a person designated by the Superintendent may contact the covered servicemember’s health care provider for clarification and/or authentication of the medical certification.

**C. Certification and restrictions on leave.**

The Board may require that an employee's leave to care for the employee's covered family member with a serious health condition, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's family member. The Board may also require that an employee's leave because of a qualifying exigency or to care for a covered servicemember with a serious injury or illness be supported by a certification. An employer must give notice of a requirement for certification each time a certification is required; written notice must be provided whenever the Board is required to determine eligibility for FMLA leave. An oral request by the Board to an employee to furnish any subsequent certification is sufficient.

The employee must provide the requested certification to the Board within 15 calendar days after the Board’s request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts or the Board provides more than 15 calendar days to return the requested certification. The employee must provide a complete and sufficient certification to the Board. The Board shall advise an employee whenever it finds a certification incomplete or insufficient, and shall state in writing what additional information is necessary to make the certification complete and sufficient. A certification is considered incomplete if the Board receives a certification, but one or more of the applicable entries have not been completed. A certification is considered insufficient if the Board receives a complete certification, but the information provided is vague, ambiguous, or non-responsive. The Board must provide the employee with 7 calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the Board are not cured in the resubmitted certification, the Board may deny the taking of FMLA leave. A certification that is not returned to the Board is not considered incomplete or insufficient, but constitutes a failure to provide certification.

At the time the Board requests certification, it must also advise an employee of the anticipated consequences of an employee's failure to provide adequate certification. If the employee fails to provide the Board with a complete and sufficient certification, despite the opportunity to cure the certification, or fails to provide any certification, the Board may deny the taking of FMLA leave. In all instances when certification is requested, it is the employee's responsibility either to furnish a complete and sufficient certification or to furnish the health care provider providing the certification with any necessary authorization from the employee or the employee's family member in order for the health care provider to release a complete and sufficient certification to the Board to support the employee's FMLA request.

Entitlement for child care ends at the end of the 12-month period beginning on the date of birth. Entitlement for child care ends at the end of the 12-month period beginning on the date of placement. The child care entitlement applies to step-parents and persons acting *"in* *loco parentis*" as well as to biological and adoptive parents.

When the Board employs both the husband and the wife, the total amount of Family and Medical Leave shall be twelve (12) weeks combined, when the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement, or to care for the employee's parent with a serious health condition. Leave taken for other qualifying events shall not be subject to this restriction.

An eligible employee may take up to 12 weeks of unpaid leave to care for the employee's son or daughter with a serious health condition.  For purposes of the FMLA and this policy, the terms “son” or “daughter” mean a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.  Persons who are “*in loco parentis*” include those with day-to-day responsibilities to care for or financially support a child.  A biological or legal relationship is not necessary. In the absence of a biological or legal relationship and/or for purposes of confirmation of family relationship, the Board may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a simple statement from the employee, or a child's birth certificate, a court document, etc. The Board is entitled to examine documentation such as a birth certificate, etc., but the employee is entitled to the return of the official document submitted for this purpose.

**D. Qualified Employee.**

A Board employee must meet the following criteria to be a "qualified employee" eligible for family and medical leave:

1. An employee must be employed by the Board for more than 12 months of active service, which need not be 12-consecutive months.
2. An employee must have worked more than 1,250 hours in the 12 months prior to the commencement of FMLA leave.
3. An employee must be employed at a worksite where 50 or more employees are employed within 75 miles of that worksite.

Service Member Time in the military service covered under the Uniformed Services Employment and Reemployment Rights Act (USERRA) will count towards fulfilling the length of employment and hours of work requirements to be eligible for an FMLA leave.

**E. Use of Paid Leave.**

If an employee does not elect, he/she will be required to use all accrued, unused paid vacation, personal, sick, compensatory time, and/or PTO as a substitute for unpaid Family and Medical Leave. Such paid leave will run concurrently with and be counted toward the 12 workweeks of leave. Once all paid leave is exhausted, any remainder of the Family and Medical Leave shall be unpaid.

**F. Coverage Period; Intermittent Leave.**

A qualified employee is entitled to take up to a total of twelve (12) weeks of a combination of paid and unpaid leave per year (as defined by the Board) for a qualifying event.

Leave under qualifying events as specified in A 1 or 2 will not be taken by an employee intermittently or on a reduced leave schedule unless the employee and the Board agree otherwise. Leave taken under qualifying events as specified in A 3, 4, and qualifying events specified under section B may be taken intermittently or on a reduced leave schedule when medically necessary. If an employee requests intermittent leave or leave on a reduced leave schedule, the Board may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave than the regular employment position of the employee. 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. Upon return to work from such leave, the employee will be returned to his/her former position, or an equivalent position.

**G. Benefits.**

Qualified employees who take family or medical leave under this provision are entitled to the continuation of health and dental care benefits during the period of family or medical leave or military caregiver leave. The Board will continue to pay the Board's share of the health and dental insurance premiums during any family or medical leave or military caregiver leave. If the employee should exhaust all paid leave during the Family and Medical Leave, the employee shall make arrangements with the Board to pay the employee's share of health insurance costs prior to the beginning of the unpaid Family and Medical Leave. The Board is entitled to recover the premium paid by the Board for maintaining insurance coverage for the employee if the employee fails to return after the expiration of the family or medical leave to which the employee is entitled under this act for a reason other than (1) the continuation, recurrence, or onset of either a serious health condition of the employee (Qualifying Events A 3) or the employee’s family member (Qualifying Event 4,or a serious injury or illness of a covered service member; or (2) other circumstances beyond the control of the employee.

Qualified employees do not accrue seniority or benefits, other than health and dental care benefits during the time of family or medical leave unless they are in active pay status using sick leave or vacation leave. Use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of an employee’s leave.

**H. Designation of Leave.**

It is the responsibility of the Board, through the Superintendent or designee, to designate employee absences as FMLA leave or not FMLA leave. This is the case whether or not an employee wishes to have absences designated as FMLA leave, and whether or not the employee has requested FMLA leave. The Board may request from the employee, and the employee will provide to the Board, such information as is reasonably necessary for the Board to determine whether an employee absence qualifies for FMLA leave. The Board will act reasonably in determining whether an absence qualifies for and/or is designated FMLA leave.

The Board shall inform an employee requesting leave whether he/she is eligible under the FMLA. If the employee is eligible, the Board will provide the employee with all appropriate forms and notices required or authorized by the FMLA including the employee’s rights and responsibilities. The Board will notify the employee that the leave will be designated as FMLA-protected leave and the amount of leave counted against the employee’s entitlement. If the employee is not eligible for FMLA leave, the Board will provide the employee as to the reason for ineligibility. If the Board determines that the leave is not FMLA-qualifying, the Board will notify the employee.

**I. Notifications and Timeframes.**

The qualified employee will give the Board at least 30 days notice of the date family or medical leave when the need is foreseeable. Otherwise, the employee shall provide notice as soon as practicable under the facts and circumstances, and generally must comply with the Board’s normal call-in procedures. Employees must comply with established procedures for requesting leave, including paid leave.

Employees must provide sufficient information for the Board 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, a 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 Board if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees will be required to provide a certification and periodic recertification supporting the need for leave.

The qualified employee will provide the Board certified information from the health care provider (licensed doctor of medicine or osteopathy) of the employee, employee's spouse or immediate family member upon requesting utilization of family or medical leave. Such certification will include:

1. The date the condition began;
2. The anticipated duration of the condition;
3. The necessity of the leave;
4. The inability of the employee to perform job functions.

The Board may, at its expense, request a second or third opinion from a health care provider. When certification is requested for FMLA approval, it is the employee’s responsibility to provide the employer with timely, complete, and sufficient certification and failure to do so may result in delay or denial of FMLA leave. If the certification is incomplete or unclear, the employee is to be given seven (7) additional calendar days to provide more complete information.

Before being permitted to return to work from a leave for the employee’s own serious health condition, the employee shall be required to provide certification from his or her health care provider that the employee is able to resume work and perform the essential functions of the employee’s job. If state or local law requires that a public health official examine an employee as a condition for returning to work, the employee must fulfill this obligation.

In cases where an FMLA leave is for a qualifying exigency, the Board shall provide the employee with a copy of the Department of Labor form [Certification of Qualifying Exigency for Military Family Leave](http://www.dol.gov/esa/whd/forms/WH-384.pdf) to be completed by the employee.  The completed form along with the documentation that the employee provides will be used to determine if the leave request qualifies and the length of the leave.

**J. Reinstatement after leave.**

Upon return from leave under this policy, the employee shall be restored to his/her former position or an equivalent position with equivalent pay, benefits, and other terms and conditions of employment, to the extent required by law. However, no employee is entitled under this policy to any right, benefit, or position other than that to which the employee would have been entitled had he/she not taken leave. The FMLA contains a limited exception to the restoration provision for certain highly compensated employees (“key employees”) under certain conditions. Employees determined to be key employees and to whom the Board intends to deny restoration will be notified in writing at the time the employee gives notice of the need for FMLA leave or as soon thereafter as the Board makes such determination.

**K. Definition of “Year”.**

For purposes of the Board’s Family and Medical Leave Act policy, a “year” means a “rolling twelve month period measured backward from the date an employee uses any FMLA leave”. This rolling 12-month period means that each time an employee takes FMLA leave, the remaining leave balance would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months. For example, if an employee has taken eight weeks of leave during the past 12 months, an additional four weeks of leave could be taken. If an employee used four weeks beginning February 1, 2008, four weeks beginning June 1, 2008, and four weeks beginning December 1, 2008, the employee would not be entitled to any additional leave until February 1, 2009. However, beginning on February 1, 2009, the employee would again be eligible to take FMLA leave, recouping the right to take the leave in the same manner and amounts in which it was used in the previous year. Thus, the employee would recoup (and be entitled to use) one additional day of FMLA leave each day for four weeks, commencing February 1, 2009. The employee would also begin to recoup additional days beginning on June 1, 2009, and additional days beginning on December 1, 2009.

**L. Unlawful Acts.**

The FMLA makes it unlawful for the Board to:

• Interfere with, restrain, or deny the exercise of any right provided under FMLA;

• 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.

**M. Enforcement.**

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

The 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.

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