

STATE OF ARIZONA

IN AND FOR THE COUNTY OF MOHAVE

IN THE MATTER OF:

APPROVING SUPERIOR COURT )  
POLICY AND PROCEDURES 1.03 DRUG ) ADMINISTRATIVE ORDER  
FREE WORKPLACE AND 1.06 FAMILY ) 2011-10  
AND MEDICAL LEAVE )  
\_\_\_\_\_ )

Recognizing the Judicial Merit System Rules apply to all classified personnel working in the divisions of the Clerk of Superior Court, Probation and Superior Court; and noting there are certain sections that also apply to unclassified personnel.

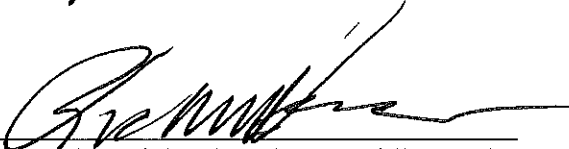
**WHEREAS**, there is a need to inactivate the sections of the Judicial Merit System Rules that also apply to unclassified personnel and reformat those sections into Superior Court Policy and Procedures that will apply to both classified and unclassified personnel.

**WHEREAS**, it is the desire of the Superior Court to inactivate Judicial Merit System Rule 507 titled 'Substance Abuse Program' and approve in its place Mohave County Superior Court Policy and Procedure 1.03 'Drug Free Workplace';

**WHEREAS**, it is the desire of the Superior Court to establish Mohave County Superior Court Policy and Procedure 1.06 'Family and Medical Leave' for the purpose of providing procedural consistency and guidance to ensure the proper administration of employee leaves falling under the purview of the Family and Medical Leave Act.

**IT IS ORDERED**, that Judicial Merit Rule 507 be inactivated and replaced by Superior Court Policy and Procedure 1.03 'Drug Free Workplace' and further ordered that Superior Court Policy and Procedure 1.06 'Family and Medical Leave' be adopted effective this date.

DATED this 28<sup>th</sup> day of April, 2011.

  
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Honorable Richard Weiss, Presiding Judge  
Mohave County Superior Court

Original filed with the Clerk of the Superior Court in Mohave County

# MOHAVE COUNTY SUPERIOR COURT POLICY AND PROCEDURE

TITLE: 1.03 DRUG FREE WORKPLACE

EFFECTIVE DATE: 04/28/2011

REVISED DATE:

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## A. PURPOSE:

The Superior Court is committed to establishing and maintaining a drug and alcohol-free workplace. Consistent with the spirit and intent of this commitment, the Superior Court will work to eliminate any substance abuse (alcohol, illegal drugs, misuse and/or abuse of prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular position in which employed) which increases the potential for accidents, absenteeism, substandard performance, poor employee morale and/or tends to undermine public confidence in the administration of justice. Employees who violate this policy shall be subject to disciplinary action up to and including dismissal, and may also result in legal consequences.

## B. DEFINITIONS:

**Alcohol:** Intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight drink, including methyl and isopropyl, and includes any medication, food or other products containing intoxicants.

**Alcohol Use:** The consumption of any beverage, mixture or preparation, including any medication containing intoxicants.

**Illegal Drugs:** A controlled substance included in Schedule I or II, as defined by section 802(6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title and as defined in A.R.S. § 13-3401. The term 'illegal drugs' does not mean the use of a controlled substance pursuant to a valid prescription or other uses authorized by law.

**Off-Duty:** The time period during which the employee is not involved in performing the employee's respective duties or functioning at the direction of their division.

**On-Duty:** The time period during which the employee is involved in performing the employee's respective duties or functioning at the direction of their division.

**Pre-Employment Drug and Alcohol Test:** A drug and alcohol test taken by the applicant or volunteer as a condition of employment. Applicants also include current employees who are applying for a competitive appointment to designated safety sensitive positions.

**Random Testing:** Selection of employees for testing based upon a computer generated random system. Random means that no personal characteristics of the employee other than job classification are entered into the selection process.

**Reasonable Suspicion:** A belief based on specific objective and articulated facts sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job safely is reduced.

**Safety Sensitive Duties:** Duties that involve assigned responsibilities for direct community or custodial supervision of probationers, defendants or juveniles pending adjudication or that involve authorization to carry and to use a firearm in the performance of other assigned responsibilities.

**Safety Sensitive Positions:** Means probation, surveillance, juvenile detention officers and other employees as designated by the Chief Probation Officer who provide direct supervision or services to adult or juvenile offenders who are subject to the jurisdiction of the court.

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**Under the Influence of Alcohol:** A measurable amount of alcohol of .02 percent or greater as measured by blood, breath or urine tests while the employee is on duty.

**Under the Influence of Drugs:** Any measurable amount of drugs which is unlawful to possess under Arizona law (unless the same is being taken by the employee pursuant to instructions of a licensed medical doctor) as measured by a blood or urine test while the employee is on duty.

**C. EMPLOYEE RESPONSIBILITIES:** An employee must:

1. Not report to work while under the influence of alcohol and drugs as defined in B above;
2. Not possess, manufacture or use, or have any detectable or measurable presence of illegal drugs or alcohol concentration of .02 or greater during working hours, on breaks, during meal periods, while on Court property in an official capacity or while operating any state, county or personal vehicle for court business;
3. Not directly or through a third party dispense or distribute drugs or alcohol to any person or to any other employee while either employee or both employees are on duty or "on-call";
4. Submit immediately to reasonable requests for alcohol and/or drug testing when requested by a Division Head or other supervisory personnel;
5. Notify his/her supervisor, before beginning work, when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of assigned equipment;
6. Provide, within twenty-four (24) hours of request, a current valid prescription for any drug or medication identified when a drug screen analysis is positive. The prescription must be in the employee's name. A legally prescribed drug means that the individual has a prescription or other written approval from a licensed physician for the use of such medication for a medical condition;
7. Immediately upon committing or learning that another employee has committed a violation of this Policy while on or off duty; the employee shall report that violation to a supervisor or other management personnel;
8. In accordance with the Federal Drug Free Workplace Act of 1988, any employee convicted of a violation of any criminal statute relating to illegal drug activity shall submit a written report documenting the relevant circumstances of the conviction, to his/her supervisor within five (5) calendar days of such conviction. Additionally, any employee who receives a citation or who is arrested for illegal drug and/or alcohol related activity shall notify his/her immediate supervisor in writing within one (1) business day.

**D. AUTHORIZED TESTING CONDITIONS:** Tests shall be conducted by an approved provider for the illegal use of the following drugs, or classes of drugs: cannabis, cocaine, opiates, amphetamines/methamphetamine; phencyclidine (PCP); and alcohol. Note: Alcohol testing is only for pre-employment and reasonable suspicion. The employee shall be notified prior to the testing for any additional drugs or classes of drugs. Urine samples shall be rendered for testing within three hours of arrival at the laboratory.

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1. **Pre-Employment Drug/Alcohol Testing:** Following a conditional offer of employment, applicants for the following positions shall be required to submit and pass a drug and alcohol test. Applicants who receive a conditional offer of employment shall be advised of the location, date and time of the drug and alcohol testing requirement by Court Human Resources or designee, and may be required to take the laboratory chain-of-custody form provided by the Court to the collection site. The cost of the drug and alcohol testing shall be the responsibility of the hiring division. An applicant's failure to successfully complete this requirement in a timely manner shall result in withdrawal of the offer of employment. Applicants/volunteers who tested positive and who were denied employment may apply/reapply for another position with the Superior Court after one year.
  - a. **Safety Sensitive Positions** – Includes Deputy Probation Officers, Probation Surveillance Officers, Juvenile Detention Officers, and other positions so designated by the Chief Probation Officer who provide direct supervision or services to adult or juvenile offenders who are subject to the jurisdiction of the court (ACJA § 6-106).
  - b. **Positions Involving Safety Sensitive Duties** – Includes positions responsible for direct community or custodial supervision of probationers, defendants or juveniles pending adjudication or that involve authorization to carry and to use a firearm in the performance of other assigned responsibilities to include court security personnel (ACJA § 6-106).
  - c. **Positions Requiring a Commercial Driver's License** – As required by Department of Transportation Regulations 49 CFR Parts 40 and 382, positions requiring the possession of a Commercial Drivers License necessary for the performance of job responsibilities.
  - d. **Student Interns and Volunteers** - May be required to submit and pass a urine drug and alcohol test before the student intern or volunteer is assigned departmental duties or for reasonable suspicion at any time.
2. **Reasonable Suspicion Testing:** Division Heads may request that an employee submit to a drug and/or alcohol analysis when a Division Head or supervisor has a reasonable suspicion of prohibited or illegal use of drugs or alcohol. All employees shall submit to testing based upon reasonable suspicion of prohibited or illegal use of drugs or alcohol.

Reasonable suspicion that an employee used alcohol or illegal drugs may be based upon, but not limited to, the following:

- a. Direct observation of drug or alcohol use or the physical symptoms of being under the influence of drugs or alcohol including but not limited to: slurred speech, dilated pupils, odor of alcohol on breath, inability to walk a straight line, drowsiness, sleeping, etc.;
- b. An accident involving state or county property;
- c. Physical or verbal altercation;
- d. Pattern of abnormal conduct, erratic behavior or behavior which is so unusual that it warrants summoning a supervisor or anyone else in authority;
- e. Arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as a focus of a criminal investigation of illegal drug possession, use or trafficking;
- f. Information provided by reliable or credible sources or by admission of the employee;
- g. Evidence that the employee tampered with a previous drug test.

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## **Reasonable Suspicion Procedure:**

The supervisor shall document, in writing, a description of the circumstances which form the basis of reasonable suspicion. The supervisor shall forward the documentation to their Division Head, or a designee to authorize such testing. If the Division Head or designee concurs that reasonable suspicion exists, the testing shall be authorized and they shall immediately notify the Court Human Resource Manager or designee. The results of the testing shall be retained in the employee's confidential medical file.

The Division Head, or designee, shall be responsible for the employee's transport to the designated collection site where a drug and/or alcohol test shall be required. After the tests are conducted the employee may be placed on paid administrative leave with pay pending the test results and the Division Head, or designee shall transport the employee home. If the employee is placed on paid administrative leave and the results of the testing are negative the employee will be reinstated. If the results of the tests are verified positive the employee may remain on paid administrative leave pending a review of the circumstances.

A Division Head, or designee, encountering an employee who refuses to submit to required testing shall immediately advise the employee that a refusal to submit to the test is subject to disciplinary action, up to and including dismissal for refusing the test. Any employee refusing to submit to a drug and/or alcohol test shall not be forced to submit to such testing.

Division Heads and supervisors shall not physically search employees. If a Division Head has reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the Court, they shall notify law enforcement. The Division Head should also immediately contact the Human Resource Manager, or if not immediately available, the Court Administrator or designee, at the time law enforcement is notified.

Division Heads and supervisors shall not confiscate, without written consent, prescription drugs or medications from an employee who has a prescription.

3. **Post-Accident Testing:** Employees who drive a state, county or personal vehicle within the scope of their employment shall submit to a drug and alcohol test after a traffic accident involving: 1) loss of life; or 2) if there is reason to believe that alcohol or drug usage may have contributed to the accident; and/or 3) if there is damage to state and county property and reasonable suspicion exists that the employee contributed to the cause of the accident.

## **Post-Accident Procedure:**

- a. All injuries shall be treated first.
- b. The employee shall immediately notify their supervisor.
- c. The employee and the supervisor shall cooperate with all law enforcement officers.
- d. The supervisor must contact his or her Division Head and the Mohave County Risk Manager prior to taking any action related to drug testing.
- e. The supervisor shall explain to the employee that testing is required to ensure that drugs or alcohol were not a contributing factor in the accident.
- f. If the employee refuses to submit to the required testing, the supervisor shall inform the employee that continued refusal to submit to testing will be considered a failure of the testing requirement.
- g. If the employee agrees to the testing, the supervisor will transport, or make alternate arrangements for the transport of the employee to the designated collection site.
- h. After the sample collections are obtained, the supervisor shall comply with the directions of the Division Head as to whether the employee should be allowed to

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- return to duty or be transported home. In no case shall the employee be authorized to drive a state or county vehicle, or to use their personal vehicle for court business, pending the results of the drug/alcohol screen.
- i. If there is reason to believe that the employee may have been under the influence of drugs or alcohol, he or she shall be placed on administrative leave with pay pending receipt of test results and a review of circumstances. The supervisor shall transport, or make alternate arrangements for the transportation of the employee home.
  - j. If the results of the tests are negative the employee shall be reinstated.
  - k. If the results of the tests are verified positive, the employee may be placed on paid administrative leave pending a review of the circumstances.
4. **Random Testing:** Random drug testing shall be conducted as a condition of employment for the following designated positions or any other employee who requests to be included in random testing as follows:
- a. Employees required to possess a commercial driver's license (CDL) shall be included in the county-wide pool for random drug testing administered by Mohave County Risk Management in accordance with Department of Transportation 49 CFR Parts 40 and 382.
  - b. Employees who perform safety sensitive duties shall be included in the statewide pool for random drug testing administered by the Arizona Supreme Court Administrative Office of the Courts (AOC) in accordance with Appendix A §6-106 ACJA. An additional group or class of employees may be included in the AOC statewide pool for random drug testing upon approval by AOC of the Chief Probation Officer's request as outlined in Appendix A §6-106(VD3).

Division Heads shall ensure that employees who have refused to submit to required testing are not assigned to or involved in any safety sensitive duties pending an administrative investigation and/or disciplinary action as appropriate.

**Notification:** Upon receipt of notification from AOC of the list of employees randomly selected for drug testing, the Chief Probation Officer, or designee shall:

- a. Schedule the employee for drug testing at an approved site within two working days of receiving notice.
- b. Schedule the employee for drug testing during the employee's regularly scheduled shift.
- c. Authorize overtime or compensatory time when scheduled testing extends a non-exempt employee's work week beyond forty hours.
- d. Issue a notification form to the selected employee requiring the employee to submit to drug testing at the collection site within two hours.
- e. Ensure the employee signs the notification form.

**Failure to Report:**

- a. If an employee fails to appear after receiving notification, the employee shall provide the Chief Probation Officer, or designee, with a written explanation for not reporting by the next business day. The report shall include the reason for not reporting to the collection site, the name of the supervisor notified; and the supervisor's instructions, if any, given to the employee.
- b. Failure of the employee to notify the supervisor of the excused absence circumstance prior to the test may be considered an unexcused absence.
- c. The Chief Probation Officer or designee shall determine if the failure to report was an excused or unexcused absence. An excused absence, may include, but is not

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limited to: inability to leave a work assignment due to a critical incident occurrence; a safety or hazardous situation involving the employee or public; required appearance in court; and/or previously approved annual or other authorized leave.

- d. If the Chief Probation Officer or designee approves the absence, the reason shall be documented and the employee's name shall be placed into the random selection pool for the next unannounced random selection.

**Refusal to submit:** Any of the following actions performed by a selected employee will be considered a refusal to submit:

- a. Failing to provide an adequate sample to allow proper testing;
  - b. Refusing to submit to or complete any paperwork relating to the test;
  - c. Engaging in conduct that clearly obstructs the testing process;
  - d. Failing to remain available for testing when requested;
  - e. Leaving the testing site before the testing is completed;
  - f. Refusing to submit a sample;
  - g. Failing to appear for testing when scheduled;
  - h. Unexcused absence, failure to report, or failure to provide a sample or refusal to submit as ordered will be considered a refusal and may result in disciplinary action up to and including dismissal; and
  - i. Producing a cold urine sample/failure to produce a urine sample that meets or exceeds the minimum temperature.
5. **Officer Shooting or Discharging a Firearm While on Duty:** Any officer who discharges a weapon in the line of duty shall submit to a drug and alcohol test within 24 hours.
6. **Probation Student Interns or Volunteers:** The Chief Probation Officer may require probation student interns or volunteers to submit and pass a urine drug and alcohol test before assignment of duties or for reasonable suspicion as outlined in subsection D2 above.

**E. NOTIFICATION TO EMPLOYEES SUBJECT TO RANDOM / REASONABLE SUSPICION TESTING:** Employees subject to testing shall be notified by the Division Head, or assigned designee, of the requirement for testing on the same day. Prior to any test, the employee shall be given the following information.

1. The location, date and time for the employee to report to the designated test location.
2. Whether the drug test is random or due to reasonable suspicion including the reason for a reasonable suspicion test.
3. Assurance that quality of testing procedures is tightly controlled, that the test used to confirm use of illegal drugs or alcohol (on reasonable suspicion including post-accident only) is highly reliable, and that the test results shall be handled with maximum respect for individual privacy and concern with safety and security.
4. Notice of the opportunity and procedures for submitting supplemental medical documentation from a licensed health care professional that supports a legitimate use for a specific drug.
5. Prior to providing a sample, the employee being tested shall have an opportunity to indicate their legitimate use of a specific drug. Employees who test positive for a drug and have demonstrated legitimate use for a drug causing the positive test result shall be notified in writing that their result is considered negative.
6. Prior to providing a sample, the employee being tested may request to have a second sample sent to a laboratory of the employee's choosing to have an independent drug test performed at the employee's expense. The laboratory chosen by the employee shall

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demonstrate the same standards of methodology as provided in section VI(A) of ACJA §6-106 Appendix A.

7. The Division Head shall authorize overtime or compensatory time for a non-exempt employee whose scheduled test extends the employee's actual work hours above forty (40) hours in a work week.

**F. URINE SAMPLE COLLECTION:** Testing will be conducted in compliance with the procedures outlined in ACJA §6-106 Appendix A (VII).

**Random Sample Collection:**

1. The employee shall provide picture identification and signature authorization upon arrival at the collection site. The employee shall fill out a Consent to Test and Chain of Custody form provided at the collection site. The employee may voluntarily list substances taken in the last 30 days which may be detected in the testing process. The employee shall be provided the appropriate sample container and be escorted to the collection area by collection site personnel. The employee shall remove all outer clothing such as jackets, coats or sweatshirts. No handbags, duffle bags, purses or other personal carrying items will be taken into the collection area. The employee will be instructed to wash their hands prior to urination.
2. All random samples will be collected using the unobserved method. The employee will be escorted to a specially prepared room and permitted to urinate in private. If the collection site person develops any information that the test has been compromised, the collection site will notify the Chief Probation Officer or designee immediately. The employee will be required to submit a second sample while being observed by a same sex employee of the collection site, and both samples will be tested.
3. **Insufficient Urine Sample:**  
If an employee is unable to provide a minimum of 45 milliliters, approximately 1.5 oz. of urine for a sample, collection site personnel shall instruct the employee to remain on site and to drink not more than 24 ounces of fluids and, after a period of up to two hours, the employee shall attempt to provide a sufficient urine sample using a fresh collection container.

If a sufficient urine sample cannot be obtained after the two hours, the insufficient sample shall be discarded and the urine collection process discontinued. The Chief Probation Officer or designee shall immediately prescribe an approved alternative testing methodology.

Once a sample is given, the employee will remain in possession of the sample until custody is transferred to collection site personnel. The sample will be examined by collection site personnel for indications of tampering. If no problem is noted, the sample will be transferred by collection site personnel to the split sample containers and sealed in view of the employee. The employee will verify the seal and initial the seal. The appropriate paperwork to ensure chain of custody will then be completed and the employee will be escorted back to the lobby and will be free to leave.

**Reasonable Suspicion:** An employee required to provide a urine sample as a result of reasonable suspicion shall be required to follow the procedures outlined in F above except that the urine sample collection shall be observed by a same sex employee of the testing site.



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## G. TEST RESULTS:

1. All testing results and any disciplinary actions resulting from a positive test result shall be confidential.
2. The provider shall send results of random testing to the Chief Probation Officer; all other testing shall be sent to Court Human Resources. A copy of the results shall be forwarded to the employee.
3. The Chief Probation Officer shall notify the Administrative Office of the Courts (AOC) of positive results and any disciplinary or other action taken against any employee of the Probation Department.
4. Violations of this policy shall result in appropriate disciplinary action, up to and including dismissal, and may also result in legal consequences. Disciplinary action up to and including dismissal may be taken under any of the following circumstances:
  - a. Reporting to work or, while on duty, having any detectable or measurable presence of illegal drugs or alcohol concentration of .02 or greater.
  - b. Use of illegal drugs.
  - c. Refusal to:
    - (1) Submit an adequate sample;
    - (2) Cooperate with the collection procedures set forth in this policy;
    - (3) Sign the consent for release of information;
    - (4) Enter or successfully complete a rehabilitation program when such program has been required by the Court.
  - d. Adulteration, substitution or other attempt to falsify the results of a drug test.
  - e. On-duty use or possession of illegal drugs or consumption of alcohol or alcohol impairment.
  - f. Off-duty use or possession of illegal drugs or unauthorized use of prescription drugs.
  - g. A determination that an employee has engaged in illegal drug trafficking including but not limited to: buy, sale, manufacture, grow, distribute, transport, or aiding, abetting or conspiring to commit these offenses.
  - h. Failure to notify the supervisor of an arrest or citation for an offense involving drug or alcohol violation by the next business day.
  - i. Failure to notify the supervisor before beginning work, when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of assigned equipment.
5. In situations where an employee who tests positive for illegal drugs or alcohol is not dismissed from employment, the employee shall be referred to available programs/resources and be given the opportunity to successfully undertake rehabilitation. The ultimate responsibility to be drug and alcohol free rests with the employee.
6. **Voluntary Self-Referral and Follow-Up:** The Superior Court encourages any employee with a drug or alcohol problem to contact his or her supervisor or Court Human Resources for assistance. The employee may be directed to use the confidential services of the employee assistance program as may be available, or the substance abuse treatment program provided within the employee's health insurance coverage. Employees will not be subject to discipline for voluntarily acknowledging a drug or alcohol problem. However, an employee may not exercise the provisions of this voluntary self-referral program after they have been notified of the requirement to test under any provisions of this policy.

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An employee who enters treatment voluntarily may use accrued comp time, EIB, PTO leave, and may be placed on an unpaid leave of absence for up to six months.

7. **Follow-up testing:** Any employee who is not dismissed from employment following a drug or alcohol violation is subject to unannounced follow-up testing for a three-year period after their return to work or completion of a rehabilitation or abatement program, whichever is later, to document that the employee remains drug free.

## H. REPORTING REQUIREMENTS:

### 1. **Violations While on Duty:**

Immediately upon committing or learning that another employee has committed a violation of this policy while on duty, an employee shall report that violation to his or her supervisor or other management personnel.

The knowing failure to report an 'on duty' violation of this policy is, by itself, a violation of the policy and subjects the employee to disciplinary action, up to and including dismissal.

The supervisor shall document and forward the documentation to the division head for review and authorization of testing, if needed.

### 2. **Violations While Off Duty:**

Immediately upon committing, or learning that another employee has committed a violation of this policy while off duty, an employee shall report that violation to an immediate supervisor or other management personnel.

The knowing failure to report an 'off duty' violation of this policy is, by itself, a violation of the policy and subjects an employee to disciplinary action up to and including dismissal.

All reports received shall be held in confidence to the extent possible to conduct a fair investigation and determine the appropriate action to be taken.

The supervisor shall document and forward the documentation to the division head for review and authorization of testing if needed.

### 3. **Violations Resulting in Arrest or Arraignment:**

Any employee arrested or charged with any criminal charge involving any drug or alcohol violation shall report the matter to their immediate supervisor on the next business day.

The supervisor shall forward the report to the division head through the chain of command. The division head shall initiate an administrative investigation and may reassign the employee, place the employee on administrative leave in accordance with applicable policy and procedure, and take disciplinary action, up to and including dismissal, prior to the final disposition of the criminal case.

### 4. **Violations Resulting in Conviction:**

As mandated by the Drug-Free Workplace Act of 1988, a report to the division head shall be made within five business days following a conviction.

## I. CONFIDENTIALITY OF TEST RESULTS:

1. Employees and the drug testing laboratory involved in any aspect of the drug testing program shall maintain strict standards of confidentiality of test results and related medical and rehabilitation records. This includes:

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- a. Maintaining maximum respect for individual privacy consistent with safety and security issues.
  - b. Handling of the test results.
  - c. All contacts with medical and health personnel, counselors, employee assistance program coordinators and administrators.
2. Records maintained in connection with this program that contain the identity, diagnosis, prognosis, or treatment of any person shall be kept confidential.
  3. Records shall be disclosed under limited circumstances and for specific purposes by consent of the employee.
    - a. Written consent shall be obtained from the person to be tested to disclose results of tests administered and related medical and rehabilitation records to the division head or designee.
    - b. This consent shall be obtained prior to the test itself.
    - c. Refusal to consent to the release of this information shall be considered a refusal to take the test.
  4. Drug abuse or alcohol treatment records may be disclosed without the consent of the employee:
    - a. To medical personnel, to the extent necessary, to meet a genuine emergency.
    - b. To qualified personnel for conducting scientific research, management audits, financial audits, or program evaluations, with all identifying information removed from data.
    - c. When authorized by an appropriate court-order granted after application showing good cause.
  5. Other disclosure may be made only with the written consent of the employee. Such consensual disclosure may be made for verification of treatment or a general evaluation of treatment progress.

**J. SEVERABILITY:**

The provisions of this Policy are severable; and if any of its provisions shall be held unconstitutional or otherwise invalid by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provision.

**K. EXCEPTIONS:**

All exceptions to this Policy must be approved by the Division Head and the Court Administrator.

**L. AWARENESS INFORMATION:**

Periodically, Human Resources shall provide information to judicial service personnel regarding drugs and alcohol and their effects. In compliance with the Drug-Free Workplace Act of 1988, a drug/alcohol awareness program will be ongoing. All personnel are expected to participate in the program.

# MOHAVE COUNTY SUPERIOR COURT POLICY AND PROCEDURE

TITLE: 1.06 FAMILY AND MEDICAL LEAVE POLICY

EFFECTIVE DATE: 04/28/2011

REVISED DATE:

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- A. PURPOSE:** The purpose of this policy is to establish guidelines and procedures governing the eligibility and use of FMLA leave in accordance with the Family and Medical Leave Act of 1993 as amended, 29 Code of Federal Regulations Part 825.
- B. GENERAL:** In accordance with the Family and Medical Leave Act of 1993 (FMLA) as amended, under particular circumstances that are critical to the life of a family, eligible employees are entitled to take up to 12 workweeks (480 hours) of unpaid, job-protected leave in a 12 month period for reasons specified in the FMLA and up to 26 workweeks (1040 hours) during a single 12-month period to care for a covered military servicemember with a serious injury or illness. The Superior Court is committed to complying with the FMLA and shall interpret and apply this policy in a manner consistent with the FMLA.
- C. ELIGIBILITY:** To be eligible for FMLA leave, an employee must have been employed by the Arizona Superior Court and/or Mohave County for at least 12 months (does not need to be consecutive) and have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the requested leave. For purposes of calculating the 1,250 hour requirement, the determining factor is whether the time is considered hours of work under the Fair Labor Standards Act (FLSA) and does not include paid time off. Additionally, in calculating the 12 month period, all employment prior to a continuous break in service of seven (7) years or more need not be counted unless the employee was on active duty with the National Guard or Reserve, or there was a written agreement that the Court intended to rehire the employee after the break in service.
- D. TYPES OF FAMILY AND MEDICAL LEAVE:**
1. Eligible employees shall be granted up to 12 work weeks (or 480 hours) of job-protected leave during a rolling 12-month period measured backward from the date the employee uses FMLA leave for one or more of the following reasons:
    - a. **Employee's Serious Health Condition:** The employee's own serious health condition that makes the employee unable to perform any one or more of the essential functions of his or her job. This includes conditions relating to pregnancy, childbirth, and related medical conditions.
    - b. **Family Leave:** The birth and care of a newborn child or placement of a new child with the employee for adoption or foster care. Any leave taken for this reason must be completed within one year after the child's birth or placement.
    - c. **Family Medical:** To care for the employee's spouse, son, daughter or parent (but not in-law) who has a serious health condition and if the employee is needed to care for such family member.  
  
Son or daughter: means the employee's child (including a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis) who is under 18 years of age, or if over 18 years of age, is incapable of self-care because of a mental or physical disability.  
  
A serious health condition: means an illness, injury, impairment, or physical or mental condition that involves either inpatient care (i.e. an overnight stay) in a medical care facility, including any period of incapacity or subsequent treatment in connection with such inpatient care; 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

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from participating in school or other daily activities. Subject to certain conditions, the continuing treatment requirement may be met by:

- 1) a period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves either:
    - treatment by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (e.g. physical therapist) under orders of, or referral by, a health care provider, two (2) or more times within thirty (30) days with the first visit occurring within seven (7) days of the first day of incapacity; or
    - treatment by a health care provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
  - 2) any period of incapacity due to pregnancy and prenatal care;
  - 3) any period of incapacity or treatment for such incapacity due to a chronic condition which requires periodic visits (at least twice per year) for treatment by a health care provider; continues over an extended period of time (including recurring episodes of a single underlying condition); and may cause episodic rather than a continuing period of incapacity (i.e. asthma, diabetes, epilepsy, etc.).
  - 4) 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).
  - 5) a period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider for:
    - 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 (3) consecutive, full calendar days in the absence of medical intervention or treatment such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).
- d. **Qualifying Exigency Leave:** For a "qualifying exigency" arising out of the covered family member's (spouse, son, daughter, or parent) covered active duty as summarized below and defined by the provisions of the FMLA:

Short-notice deployment – to address any issue relating to a short-notice deployment (i.e. within seven calendar days of notification of deployment);

Military events and related activities – to attend any official ceremony, program, or event sponsored by the military that is related to the covered military member's active duty; or call to active duty in support of a contingency operation and to attend family support or assistance programs and informational briefings sponsored by the military, one of its service organizations or the American Red Cross;

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Child care and school activities – to arrange for alternative childcare for a child of a covered military member; to provide childcare on an urgent or immediate need basis; to enroll or transfer a child to a new school or day-care facility; or to attend meetings with school or day-care facility staff that are made necessary by the covered military member's active duty or call to active duty;

Financial and legal arrangements – to make or update financial or legal arrangements related to the covered military member's absence while on active duty or call to active duty; and to act as the covered military member's representative with regard to obtaining, arranging or appealing military benefits;

Counseling – to attend counseling sessions by a non-healthcare provider for the employee, the covered military member, or his or her child, if the need for counseling is due to the covered military member's deployment or active duty status;

Rest and recuperation – to spend up to five (5) days with a covered military member who is on short-term, temporary rest and recuperation leave;

Post-deployment activities – to attend ceremonies, reintegration briefings and events and any other official ceremony or program sponsored by the military for 90 days following the termination of the covered military member's active duty status; and to address issues arising from the death of a covered military member while on active duty; and/or

Other activities that the Superior Court and the employee agree as qualifying as an exigency.

2. **Military Caregiver Leave:** Eligible employees shall be entitled to a total of 26-work weeks (or 1040 hours) of job-protected leave during a single 12-month period to care for a parent, son, daughter, spouse or next of kin who is a covered servicemember with a serious illness or injury incurred in the line of duty as defined by the FMLA.
3. An eligible employee shall be entitled to no more than 12 work weeks of FMLA leave for the reasons under paragraph D1 above, and a combined total of 26 work weeks of FMLA leave under paragraph D1 and D2 during a 12-month period.

**E. CALCULATION OF THE 12 MONTH PERIOD:** With the exception of military caregiver leave, the 12-month period is a rolling 12 month period measured backward from the date an employee uses any FMLA leave. Each time an employee uses FMLA leave, the remaining FMLA leave entitlement is any balance of the 12 weeks that has not been used during the immediately preceding 12 months. For military caregiver leave, the 12-month period is a rolling 12-month period measured forward beginning on the first day the employee takes leave for this reason and ends 12 months later. The Court reserves the right to change the method of calculating the 12-month period in accordance with the FMLA.

**F. INTERMITTENT OR REDUCED SCHEDULE LEAVE:** An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule to: 1) care for a child, spouse or parent with a serious health condition; 2) because of a serious health condition of the employee when 'medically necessary' and 3) for qualifying military exigencies. An employee may also take leave intermittently or on a reduced work schedule for the birth of a child or for placement of a child for adoption or foster care that is not medically necessary with the approval of the Division Head.

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An employee may be required to transfer temporarily to a position with equivalent pay and benefits that better accommodates recurring periods of leave when the leave is planned based on scheduled medical treatment.

- G. SAME EMPLOYER LIMITATION:** A husband and wife who are both employed by Mohave County Superior Court and/or Mohave County are limited in the amount of family leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition to a combined total of 12 work weeks (or 26 work weeks if leave is to care for a covered servicemember with a serious injury or illness.)
- H. USE OF PAID AND UNPAID LEAVE:** An employee on FMLA leave is required to use all accrued paid leave (PTO, EIB, and compensatory leave as may be appropriate for the specific leave situation.) When an employee has used all eligible paid leave for a portion of FMLA leave and additional FMLA time off is needed, the employee may use unpaid leave so that the total period of leave (paid and unpaid) equals 12 or 26 workweeks, depending on the reason for the leave.
- I. COORDINATION WITH OTHER LEAVE TYPES:** If the Court learns that an employee is on leave under another benefit or leave program (i.e. workers' compensation, short-term disability, PTO, etc.) and if the leave qualifies as FMLA the Court will designate the leave as FMLA-qualifying from the commencement of the leave. In such cases, the leave will run concurrently with FMLA.

Employees who are on workers' compensation related FMLA leave who are offered a light duty position will have the option of remaining on FMLA leave (and foregoing the light duty position and additional workers' compensation benefits) or accepting the light-duty position. If the employee accepts the light duty position, then the employee's right to job restoration (as described below) runs through the end of their allowable FMLA leave.

- J. CONTINUATION OF GROUP HEALTH BENEFITS:** During the period of 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 if the employee had remained on the job continuously. Employee contributions will be required either through payroll deduction or by direct payment to the Benefit Division of Mohave County Occupational Health Department. The employee will be advised by Mohave County Occupational Health as to the amount and method of payment. Employee contribution amounts are subject to any change in rates that occurs while the employee is on leave.
- K. JOB RESTORATION:** Except for certain 'key' employees in highly compensated key positions, employees returning from an FMLA leave shall be reinstated to their same job or to an equivalent job with equivalent pay, benefits and working conditions, including the same or substantially similar duties and responsibilities which require substantially equivalent skill, effort, responsibility and authority. Job restoration may be denied if conditions unrelated to the FMLA leave have resulted in the elimination of the employee's position, or if the employee qualifies as a 'Key Employee' (generally the highest paid 10% of the workforce.) Key employees may be denied job restoration if it would cause substantial and grievous economic injury to the Court, in which case the key employee will be notified of this decision.

**L. PROCEDURE**

- 1. General Notice Requirement:** To comply with the general notice requirements of the Act, a link to the Notice to Employees of Rights Under FMLA (WHD Publication 1420) is provided at the end of this document.

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2. **Designation of FMLA Coordinator:** The Clerk of Superior Court and Chief Probation Officer shall designate a non-supervisory employee as FMLA Coordinator for their respective divisions. The Court Human Resource Manager shall act as the FMLA Coordinator for Superior Court judicial divisions and court administration. The FMLA Coordinator is responsible for coordinating the processing of FMLA leaves for employees of their respective divisions.

3. **Employee Notice Requirements:**

- a. **Initial Notice of the Need for Leave:** An employee is required to give 30 days notice of the need for foreseeable leave by submitting an 'Employee Request for FMLA Leave Form' to his/her immediate supervisor or FMLA Coordinator. If an employee fails to give 30 days notice for a foreseeable leave with no reasonable excuse for the delay, the leave may be denied until 30 days after the employee provides notice.

In unexpected or unforeseeable situations, an employee must provide notice to his or her immediate supervisor or the designated FMLA Coordinator as soon as practicable. Absent unusual circumstances, employees must comply with the usual and customary notice and procedural requirements for requesting leave. If the employee is incapacitated, a family member or other responsible party may submit the request for leave on behalf of the employee. In the absence of proper notification to the employer, the employee may not subsequently assert FMLA protection for the absence.

An employee need not specifically request FMLA leave to be placed on FMLA leave. If the employee requests leave and, in explaining the reasons for the request, provides sufficient information to determine that the requested leave is for an FMLA-qualifying purpose, the employee's leave, paid or unpaid, shall be designated and processed as FMLA leave as appropriate.

- b. **Certification:** When leave is taken due to the serious health condition of the employee or a covered family member, or for a covered military servicemember, employees are required to submit timely, complete and sufficient certification, and recertification as may be appropriate, within 15 calendar days after request, unless it is not practicable to do so despite an employee's diligent, good faith efforts.

If the employee's leave to care for his or her own serious health condition or that of a family member is expected to last more than 30 days, the Court will require a new certification from the employee's health care provider when the leave is scheduled to expire, or every six (6) months, whichever occurs earlier.

Whenever the Court deems it appropriate to do so, it may waive its rights to receive timely, complete and/or sufficient FMLA medical certifications.

- c. **Return to Work / Fitness for Duty:** Employees are required to report periodically on their status and intent to return to work. It may be necessary for an employee to take more leave than originally anticipated. Conversely, an employee may discover after beginning leave that the circumstances have changed and the amount of leave originally anticipated is no longer necessary. An employee may not take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave. In both of these situations, the Court may require that the employee provide reasonable notice (i.e. within two business days) of the changed circumstances where foreseeable.



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When leave is taken due to the employee's serious health condition, before returning to work the employee must provide the FMLA Coordinator with a fitness-for-duty certification from a health care provider that he/she is medically able to return to work. Such certification shall include: 1) the date the employee is able to resume work; 2) that the employee is able to perform the essential functions of his or her job; and 3) any work restrictions, if any. Additionally, the Court may delay and/or deny job restoration until the employee provides a fitness-for-duty certification for an FMLA leave related to the serious health condition of the employee.

The Court may not require fitness-for-duty certifications for each absence taken on an intermittent or reduced leave schedule, but may require one every 30 days if there are reasonable safety concerns.

#### 4. Employer Notice Requirements:

- a. Notice of Rights and Responsibilities: When an employee requests FMLA leave or when the Superior Court acquires knowledge that an employee's leave may be for an FMLA qualifying reason, the FMLA Coordinator will provide the employee within five business days, absent extenuating circumstances, written notice of the employee's eligibility to take FMLA leave. The written notice shall advise the employee if the employee is eligible or not eligible for FMLA. If not eligible, the written notice shall indicate the reasons why the employee is not eligible. If eligible for FMLA leave, the written notice shall advise the employee of his/her rights and obligations with respect to the leave, and as applicable, the required certification form. The Court reserves the right to designate any qualifying leave as FMLA leave, regardless of whether the employee has requested it.
- b. Incomplete/insufficient certifications: If an employee returns an incomplete or insufficient certification, the FMLA Coordinator shall advise the Court Human Resource Manager. The Court Human Resource Manager, or assigned designee, shall inform the employee in writing what additional information is necessary to make the certification complete and sufficient. In order to cure the deficiency, the employee must then return a complete and sufficient certification within seven (7) calendar days. If the employee fails to cure a deficiency in a certification, or fails to return a certification within the prescribed time period, the employee's leave may be denied and the employee deemed to be absent without authorized leave which may subject the employee to disciplinary action, up to and including dismissal.

In situations where there is need to clarify or authenticate a submitted certification, the Court Human Resource Manager, or designee, may seek the employee's permission to contact the health care provider for the purpose of authenticating or clarifying the medical certification. If an employee chooses not to provide the Court Human Resource Manager, or designee, with permission to clarify or authenticate the certification with the health care provider, the Court may deny the employee's FMLA leave.

- c. Second Medical Opinion: If it is determined that a completed medical certification is not sufficient to conclude that the employee's condition is a 'serious health condition', the Court may request that the employee obtain a second opinion by a Health Care Provider designated by the Court at Court expense. The second opinion Health Care Provider must not be regularly utilized by the Court. If the opinions of the initial and second health care providers differ, the Court may, at its expense, require the employee to obtain a third, final and binding certification from a health care provider designated or approved jointly by the Court and the employee.

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- d. Designation Notice: Within five business days (absent extenuating circumstances) of having enough information to determine whether the requested leave is FMLA eligible, the FMLA Coordinator shall provide the employee with a Designation Notice informing the employee whether or not the leave is designated as FMLA leave and the amount of leave that will be designated, if known. The final decision concerning the leave shall be governed by the provisions of the Family Medical Leave Act.

The FMLA Coordinator may retroactively designate leave as FMLA leave with appropriate notice to the employee provided the Court's failure to designate leave as FMLA qualifying at an earlier date did not cause harm or injury to the employee. In all cases where leaves qualify for FMLA protection, the Court and the employee can mutually agree that leave be retroactively designated as FMLA leave. The FMLA Coordinator may not designate leave as FMLA after an employee has returned to work with two exceptions:

- If the employee was absent for an FMLA reason and the FMLA Coordinator did not learn the reason for the absence until the employee's return (i.e. where the employee was absent only a brief period), the FMLA Coordinator may, upon the employee's return to work, promptly, within five business days of the employee's return to work) process the leave as FMLA by providing the employee with the Notice of Rights and Responsibilities and Designation Notice, as appropriate.
- There may be instances in which the FMLA Coordinator knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA, or where the FMLA Coordinator has requested certification which has not yet been received, or the parties are in the process of obtaining a second or third medical opinion. In these cases, upon receipt of the requisite information from the employee or the certification which confirms the leave is for a FMLA qualifying event, the FMLA Coordinator shall notify the employee of the FMLA designation.

## M. QUESTIONS AND/OR COMPLAINTS ABOUT FMLA LEAVE:

Employees with questions regarding FMLA leave should contact Court Human Resources.

The FMLA makes it unlawful for employers to: 1) interfere with, restrain, or deny the exercise of any right provided under the FMLA; or 2) discharge or discriminate against any person for opposing any practice made unlawful by FMLA or involvement in any proceeding under or relating to FMLA. If employees believe their rights have been violated, they should contact Court Human Resources immediately. The Superior Court will investigate any FMLA complaints and take prompt and appropriate remedial action to address and/or remedy any FMLA violation.

## N. GENERAL PROVISIONS:

1. PTO leave shall accrue during an approved FMLA leave of absence with pay. PTO leave accrued during a paid FMLA leave may not be used until the employee has returned to work from the absence and has worked at least one (1) full day.
2. PTO leave shall not accrue during an approved FMLA leave of absence without pay when such leaves have duration of one or more pay periods.
3. Employees who are on a paid FMLA status who are utilizing accrued paid leave (PTO, EIB and/or compensatory leave) are entitled pay for holidays. Employees who are on an unpaid FMLA and who are considered to be not actively at work are not entitled to receive pay for holidays.

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4. An approved FMLA leave of absence is not considered a break in service for purposes of vesting and eligibility to participate in a retirement plan.
5. Employees who are unable to return to work following the expiration of FMLA leave and who need additional time off work must obtain proper approval of their leave extension (i.e. PTO, unpaid leave of absence, etc.) as required by the provisions of Mohave County Administrative Procedures and the Judicial Merit System Rules.
6. Employees who are on an approved FMLA leave of absence may not perform work for any other employer during that leave.
7. Retention of all medical information must be in compliance with the confidentiality requirements of the American's with Disabilities Act as amended (ADAA). All employee medical information that contains specific information regarding an individual's current diagnosis, prognosis, medical condition, or medical history must be forwarded to Court Human Resources for filing in the employee's confidential medical file, maintained in a separate locked file, apart from general personnel files, with controlled access. Absent extraordinary circumstances, immediate supervisors will only be informed regarding an employee's restrictions related to their essential job functions and/or necessary accommodations.
8. An employee who fraudulently obtains an FMLA leave shall be subject to disciplinary action up to and including dismissal.

[LINK TO FORMS](#)

[FMLA GENERAL NOTICE](#)

[Employee Request for FMLA Leave](#)

**SUPERIOR COURT FMLA LEAVE  
RESPONSIBILITY & PROCEDURE CHECKLISTS (See reverse)**

1. **Employees are responsible for:**
  - a. Keeping their supervisor informed about reasons for absences from work, especially those involving medical related absence of an overnight stay in a hospital or an absence involving more than three consecutive days or any repeated occurrences of medical-related PTO/EIB leave, or military-related leave which may be covered by FMLA.
  - b. Completing and submitting required forms to the FMLA Coordinator in a timely manner.
  - c. Reporting to the FMLA Coordinator regarding the status of their FMLA leave. As an alternative, a representative may report for the employee.
  - d. Providing advance notice of at least two working days before returning to work following FMLA leave.
  - e. Providing the FMLA Coordinator with a fitness for duty release from the employee's health care provider before returning to work from FMLA leave (only applies to FMLA leave for the serious health condition of the employee.) Such fitness for duty release shall include: 1) the date the employee is able to resume work; 2) that the employee is able to perform the essential functions of his or her job; and 3) any work restrictions, if any.
  
2. **Supervisors are responsible for:**
  - a. Reporting any family or employee medical related absence of an overnight stay in a hospital or an absence involving more than three consecutive days or any repeated occurrences of medical-related PTO/EIB leave, or military-related leave to the FMLA Coordinator to enable a determination of eligibility and qualification for FMLA.
  - b. Consulting with their designated FMLA Coordinator and the Court Human Resource Manager as needed to determine appropriate actions when dealing with an employee requesting or taking FMLA leave.
  - c. Ensuring that FMLA leave is properly designated on the employee's timesheet and that a copy of timesheets with FMLA leave are forwarded to the FMLA Coordinator.
  
3. **FMLA Coordinators are responsible for:**
  - a. Administering the provisions of the FMLA to employees of their court division.
  - b. Providing information to employees about the FMLA and communicating with employees during the course of their FMLA leave as necessary to keep the employee informed about their rights and responsibilities.
  - c. Determining employee eligibility for FMLA leave.
  - d. Providing employees with written notice of their FMLA Notice of Rights and Responsibilities; reviewing completed certifications to determine eligibility under FMLA; and providing employees with the completed FMLA Designation Notice. Forwarding FMLA documentation including the Employee Request for FMLA Leave, Notice of Rights and Responsibilities, Certification Forms, Designation Notice and Mohave County Leave Notification Form to Court Human Resources for processing.
  - e. Tracking the amount of FMLA leave used by employees of their court division.
  - f. Maintaining strict confidentiality of employee medical information.
  
4. **Court Human Resources is responsible for overseeing the proper administration of FMLA for employees of the Superior Court including but not limited to:**
  - a. Making available forms and information regarding the FMLA.
  - b. Assisting employees, supervisors, FMLA Coordinators, Mohave County Payroll, and Mohave County Occupational Health with issues regarding FMLA leave for Superior Court employees.
  - c. Reviewing forms, certifications and other documentation relative to an eligible employee's FMLA leave for adherence to this policy.
  - d. Processing FMLA-related Personnel Action (PA) forms to Mohave County Payroll.
  - e. Processing FMLA-related Personnel Action (PA) forms and associated documentation (i.e. copies of timesheets for employees on unpaid FMLA, Mohave County Leave Notification Form, Notice of Rights and Responsibilities, Designation Notice to Mohave County Occupational Health and employee FMLA medical certification forms to Occupational Health.
  - f. Maintaining all medical information relating to FMLA leaves in confidential medical files, separate and apart from the employee's master personnel file.
  
5. **Mohave County Occupational Health is responsible for administering the provisions of the FMLA concerning continuation of group health benefits for employees on approved FMLA leaves and for assisting employees with application for Short-term and Long-term Disability programs, as may be applicable.**

## FMLA LEAVE - PROCEDURE CHECKLIST

### Court Division:

1. **DIVISION HEAD** designates non-supervisory employee as FMLA Coordinator for the court division.
2. **SUPERVISOR** becomes aware that an employee is taking, or plans to take, leave for reasons that may qualify under the FMLA. **SUPERVISOR** informs the FMLA Coordinator.
3. If not already completed, the **FMLA COORDINATOR** asks the employee to complete the Superior Court Employee Request for FMLA Leave Form (Sample Document #1). An employee's failure to submit the completed form does not relieve the Court from responsibility to handle the leave in accordance with the provisions of the FMLA.
4. The **FMLA COORDINATOR** reviews employee eligibility for FMLA leave:
  - Has the employee worked for the Superior Court &/or Mohave County for at least 12 months (does not need to be consecutive)?
  - Has the employee worked at least 1250 hours in the 12 months immediately preceding the first day of FMLA leave? Run Detail Check History Report from MUNIS to determine hours actually worked.
  - How much FMLA leave, if any, has the employee used in the previous 12 months?
5. Once eligibility is determined, the **FMLA COORDINATOR** gives the employee a completed Notice of Eligibility and Rights and Responsibilities (Sample Document #2). This includes requesting that the employee complete and return the appropriate certification form for the requested leave and returning it within 15 calendar days. Do not ask for more information than the certification provides. Note: If leave is for the employee's own serious health condition, include a copy of the employee's job description.
6. If leave will be intermittent, the **FMLA COORDINATOR** works with the employee and supervisor to reach a mutually satisfactory schedule and/or to clarify the schedule of absences as much as possible and consider accommodating the employee as needed.
7. Upon receipt of the completed certification, the **FMLA COORDINATOR** evaluates the form(s) to determine if the event is an FMLA qualifying event. Contact Court HR if the certification is incomplete, or insufficient information exists to determine if event qualifies as FMLA leave.
8. Within 5 business days of receiving the completed certification, the **FMLA COORDINATOR** notifies employee by completing a Designation Notice that the time off will or will not be considered covered under the FMLA (Sample Document #3). Forward the completed certification, a copy of Designation Notice, and the completed Mohave County Leave Notification Form (Sample Document #4) to Court HR.
9. **Supervisor** forwards copies of the employee's FMLA timesheets (Sample Document #7) to the **FMLA COORDINATOR** who will track ongoing FMLA leave hours in the FMLA Tracking Spreadsheet (Sample Document #8).
10. If the employee transitions from a paid to unpaid FMLA leave status, the **FMLA COORDINATOR** notifies the HR Manager to send the employee written notification of the transition to unpaid FMLA. Additionally, the FMLA Coordinator shall forward a copy of the employee's timesheets of unpaid FMLA to Court HR for forwarding on to Mohave County Occupational Health.
11. The **FMLA COORDINATOR** notifies Court HR of the employee's return to work from FMLA leave and ensures the employee provides a fitness-for-duty certification if returning from employee serious health condition FMLA. Provides a copy of fitness-for-duty certification to Court HR.

### Court HR:

1. Prepare and process a Personnel Action (PA) Form regarding the placement of employee on FMLA leave. When providing Mohave County Occupational Health with a copy of the PA, include a copy of the FMLA Rights and Responsibilities Notice, Designation Notice and Mohave County Leave Request form. For employee serious health condition FMLA, provide copies of FMLA medical certifications to Mohave County Occupational Health.
2. Upon notification that the employee has returned from work, or when placement on Intermittent FMLA is appropriate, prepare and process a Personnel Action (PA) Form. Upon conclusion of the FMLA leave process PA to end the FMLA leave and complete data entry in Alliance.

### Mohave County Occupational Health:

1. Provide employee with information on continuation of benefits while on FMLA.
2. As may be applicable, provide guidance and assist employees with Short-term Disability and Long-term Disability benefits.

### Documents

### Document Samples

Documents	Document Samples
1	Employee Request for Leave Form
2	Notice of Eligibility and Rights & Responsibilities
3	Designation Notice
4	Mohave County Leave Notification Form
5	Sample Notice to Employee of Transition to Unpaid FMLA
6	Sample Notice to Employee of Upcoming Expiration of FMLA
7	Mohave County FMLA Timesheet
8	FMLA Tracking Spreadsheet



**Mohave County Superior Court  
FMLA Notice of Eligibility and Rights & Responsibilities**

To be eligible an employee must have worked for Mohave County/Superior Court for at least 12 months and must have worked at least 1,250 hours in the 12 months preceding the leave. This notice provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the Superior Court of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(b), (c).

**PART A – NOTICE OF ELIGIBILITY**

DATE: \_\_\_\_\_

TO: \_\_\_\_\_

FROM: \_\_\_\_\_

On \_\_\_\_\_ you informed us that you needed leave beginning on \_\_\_\_\_ through \_\_\_\_\_ for the following reason:

- \_\_\_\_\_ The birth of a child, or placement of a child with you for adoption or foster care;
- \_\_\_\_\_ Your own serious health condition;
- \_\_\_\_\_ Because you are needed to care for your \_\_\_\_\_ spouse; \_\_\_\_\_ child; \_\_\_\_\_ parent due to his/her serious health condition;
- \_\_\_\_\_ Because of a qualifying exigency arising out of the fact that your \_\_\_\_\_ spouse; \_\_\_\_\_ son or daughter; \_\_\_\_\_ parent is on active duty or call to active duty status in support of a contingency operation as a member of the National Guard or Reserves;
- \_\_\_\_\_ Because you are the \_\_\_\_\_ spouse; \_\_\_\_\_ son or daughter; \_\_\_\_\_ parent; \_\_\_\_\_ next of kin of a covered servicemember with a serious injury or illness.

**This Notice is to inform you that you:**

\_\_\_\_\_ **ARE** eligible for FMLA leave (See Part B on reverse for Rights and Responsibilities)

\_\_\_\_\_ Are **NOT** eligible for FMLA leave, because (only one reason need be checked):

- \_\_\_\_\_ You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately \_\_\_\_\_ months towards this requirement.
- \_\_\_\_\_ You have not met the FMLA's 1,250-hours-worked requirement.

If you have any questions, contact Superior Court Human Resources at 928-718-4928, extension 4470 or you can view the FMLA poster located at [www.mohavecourts.com](http://www.mohavecourts.com).

**PART B – RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE**

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us within fifteen calendar days from your receipt of this notice by \_\_\_\_\_. If sufficient information is not provided in a timely manner, your leave may be denied.

- \_\_\_\_\_ Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request \_\_\_\_\_ is/\_\_\_\_\_ is not enclosed.
- \_\_\_\_\_ Sufficient documentation to establish the required relationship between you and your family member.
- \_\_\_\_\_ Other information needed (please specify):
- \_\_\_\_\_ No additional information requested

If your leave does qualify as FMLA leave you will have the following responsibilities while on FMLA leave (only  blanks apply):

You will be required to use your available paid leave accruals in the form of PTO, EIB, and/or Compensatory leave during your FMLA absence. Payroll records indicate that you currently have the following leave balances:  PTO hours,  EIB hours, and  Compensatory Leave hours. This means that you will receive your paid leave and the leave is considered protected FMLA leave and counted against your FMLA leave entitlement.

As of  you have exhausted all available forms of paid leave (PTO, EIB and or compensatory time) and you are now in an unpaid FMLA leave status. You must contact Sharen Wilson, Mohave County Benefit Coordinator, at 928-753-0736 extension 4355 to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on unpaid FMLA leave. You have a minimum 30-day grace period in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided the Mohave County Benefits Office notifies you in writing at least 15 days before the date that your health coverage will lapse, or, at Mohave County's option, the County may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.

Due to your status with the Superior Court, you are considered a "key employee" as defined in the FMLA. As a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grievous economic injury to us. We  have/  have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous economic harm to us.

While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every . (Indicate interval of periodic reports, as appropriate for the particular leave situation).

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on the reverse side of this form, you will be required to notify us at least 2 workdays prior to the date you intend to report for work.

If your leave does qualify as FMLA leave you will have the following rights while on FMLA leave:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as a "rolling" 12-month period measured backward from the date of any FMLA leave usage.
- You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on: .
- Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.
- You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.
- If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse Mohave County for its share of health insurance premiums paid on your behalf during your FMLA leave.

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave and count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact Superior Court Human Resources at 928-718-4928 or:

at .

Prepared By (Signature):



### Mohave County Superior Court FMLA Designation Notice

Leave covered under the Family and Medical Leave Act (FMLA) must be designated as FMLA-protected and the Superior Court must inform the employee of the amount of leave that will be counted against the employee's FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the Superior Court may request that the leave be supported by a certification. If the certification is incomplete or insufficient, the Superior Court must state in writing what additional information is necessary to make the certification complete and sufficient.

DATE: \_\_\_\_\_

TO: \_\_\_\_\_

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided. We received your most recent information on \_\_\_\_\_ and have decided:

\_\_\_\_\_ Your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA \_\_\_\_\_ leave.

The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:

\_\_\_\_\_ Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: \_\_\_\_\_ Weeks \_\_\_\_\_ Days \_\_\_\_\_ Hours

\_\_\_\_\_ Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

**Please be advised (check if applicable):**

\_\_\_\_\_ We are requiring you to use paid leave (PTO, EIB and/or accrued Compensatory Leave) during your FMLA leave. If you have no remaining available paid leave accruals your FMLA will be unpaid.

\_\_\_\_\_ You will be required to present a fitness-for-duty certificate to be restored to employment. If such certification is not timely received, your return to work may be delayed until certification is provided. Please see the attached job description for a list of the essential functions of your position. If attached, the fitness-for-duty certification must address your ability to perform these functions.

\_\_\_\_\_ Additional information is needed to determine if your FMLA leave request can be approved:

\_\_\_\_\_ The certification you have provided is not complete and sufficient to determine whether the FMLA applies to your leave request. You must provide the following information within 7 calendar days no later than \_\_\_\_\_, unless it is not practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied. (Provide the list of written deficiencies and specify information needed to make the certification complete and sufficient):

\_\_\_\_\_ We are exercising our right to have you obtain a second or third opinion medical certification at our expense, and we will provide further details at a later time.

\_\_\_\_\_ Your FMLA Leave request is NOT Approved because \_\_\_\_\_.

\_\_\_\_\_ The FMLA does not apply to your leave request because \_\_\_\_\_.

\_\_\_\_\_ You have exhausted your FMLA leave entitlement in the applicable 12-month period.

Signature/Title of Preparer: \_\_\_\_\_ Date: \_\_\_\_\_

# LEAVE NOTIFICATION

**Department use only**

Employee Name \_\_\_\_\_ Employee # \_\_\_\_\_ Date of Hire \_\_\_\_\_

Employee Address \_\_\_\_\_ Telephone # \_\_\_\_\_

Department \_\_\_\_\_ Position \_\_\_\_\_ Status: FT  PT  Temporary

Available PTO Hours \_\_\_\_\_ Available EIB Hours \_\_\_\_\_ FMLA used in the last 12 months \_\_\_\_\_

- FMLA
- FMLA Intermittent
- Leave of Absence (LOA)
- Leave of Absence Without Pay
- Military Leave
- Return from Leave

Department Head's Signature \_\_\_\_\_ Date \_\_\_\_\_

**Occupational Health Use Only**

FMLA Letter Sent  Yes  No Date Letter Sent \_\_\_\_\_

Effective Date \_\_\_\_\_ End Date \_\_\_\_\_

FMLA Application/Medical  Yes  No Date Received \_\_\_\_\_

Worker's Comp or STD  Yes  No Start Date \_\_\_\_\_ Return Date \_\_\_\_\_

Long Term Disability  Yes  No Start Date \_\_\_\_\_ Return Date \_\_\_\_\_

<b>Benefits:</b>	Medical	\$ _____ Biweekly	\$ _____ Monthly	<b>COBRA:</b>	
	Dental	\$ _____ Biweekly	\$ _____ Monthly		\$ _____ Monthly
	Vision	\$ _____ Biweekly	\$ _____ Monthly		\$ _____ Monthly
	FSA	\$ _____ Biweekly	\$ _____ Monthly		\$ _____ Monthly
	Lincoln	\$ _____ Biweekly	\$ _____ Monthly		
	AFLAC	\$ _____ Biweekly	\$ _____ Monthly		
	Nationwide	\$ _____ Biweekly	\$ _____ Monthly		
	ICMA	\$ _____ Biweekly	\$ _____ Monthly		
	Total	\$ _____ Biweekly	\$ _____ Monthly		

Occupational Health Benefits Manager's Signature \_\_\_\_\_ Date \_\_\_\_\_

Original – Occupational Health/Benefits

Copy – Payroll

**SAMPLE NOTICE TO EMPLOYEE OF TRANSITION TO UNPAID FMLA**

June 1, 2010

Employee Name  
Address  
City, State Zip

Dear Employee Name:

This letter is sent as an update on your current FMLA leave that began May 24, 2010. I wish to inform you that your allowable 12 weeks of FMLA leave will expire on August 15, 2010.

I also wanted to inform you that as of the payperiod ending June 4, 2010 you will have exhausted all of your available PTO leave accruals. As a result, you are considered to be in an unpaid FMLA status as of June 5, 2010. As previously indicated in the May 15, 2010, FMLA Designation Notice you received, you will need to contact Sharen Wilson, Mohave County Benefits Coordinator, to make arrangements for the payment of your portion of your group health insurance premiums if you wish to continue these coverages while in an unpaid FMLA leave status. You can contact Ms. Wilson at 928-753-0736 extension 4355.

Also, if you anticipate that you will be off work more than 45 consecutive days, you may also wish to ask Ms. Wilson about applying for benefits under the Mohave County Short-term Disability (STD) Program. I hope this information is helpful. Please don't hesitate to call me at 928-753-0741 extension 4271 if you have any questions or if I can be of any assistance.

Sincerely,

Name, FMLA Coordinator  
Mohave County Probation

cc: Mohave County Benefit Coordinator  
Superior Court Human Resources

**SAMPLE NOTICE TO EMPLOYEE OF EXPIRATION OF FMLA**

August 1, 2010

Employee Name  
Address  
City, State Zip

Dear Employee Name,

This letter is sent as a reminder that your 12 weeks of Family and Medical Leave (FMLA) leave expires on August 15, 2010. Accordingly, you are expected to return back to work on August 16, 2010. Because your FMLA leave was the result of your own serious health condition, you must provide certification from your health care provider that specifies the date you are able to return to your job and your ability to perform the essential functions of your job with or without reasonable accommodation. Enclosed is a copy of your job description to provide to your health care provider.

If you are unable to return to work on August 16, 2010, you must inform us of your intent to return to work. You may wish to consider an unpaid leave of absence which requires you to submit a written request to your Division Head including an update from your health care provider with his/her opinion on whether you can perform the essential functions of your job with or without reasonable accommodation (1) currently, (2) in the near future, or at a later specified date. Also please have your health care provider list the suggested accommodations, if any, which he/she believes would allow you to perform the essential functions of your position. Again, you will need to provide your health care provider with the enclosed copy of your job description.

Please be assured that the Superior Court is committed to working with employees in exploring and considering their requests for assistance in light of the Department's needs. Enclosed please find a copy of Mohave County Administrative Procedure 11-1 (II.7.E) concerning unpaid leaves of absence.

Should you have any questions regarding the above information or if I can be of any assistance to you, please do not hesitate to contact me at 928-718-4928.

Sincerely,

Name  
Human Resource Manager

Encl.

cc: Division Head (w/o enclosures)



### FMLA Time Tracking Tool for Qualifying Employees

<b>Employee Name:</b>		<b>Start 1 yr early?</b>			
<b>Employee ID:</b>	123		2		
<b>Standard Work Hours Per Week:</b>	40				
<b>Standard FMLA Hours Available:</b>	480		<b>Start Date</b>		
<b>Start Date:</b>	05/24/2010		05/24/2010		
<b>Has employee used any FMLA time in last 12 months?</b>	<input checked="" type="radio"/> No <input type="radio"/> Yes				

Date	Day	# FMLA Hours Taken	Type of Absence (PTO, EIB, Comp Time, Unpaid)	FMLA Time Available	Activity	Notes
05/24/2010	Mon	8.00	PTO	472.00		
05/25/2010	Tue	8.00	PTO	464.00		
05/26/2010	Wed	8.00	PTO	456.00		
05/27/2010	Thu	8.00	PTO	448.00		
05/28/2010	Fri	8.00	PTO	440.00		
05/29/2010	Sat			440.00		
05/30/2010	Sun			440.00		
05/31/2010	Mon	8.00	PTO	432.00		
06/01/2010	Tue	8.00	PTO	424.00		
06/02/2010	Wed	8.00	PTO	416.00		
06/03/2010	Thu	8.00	PTO	408.00		
06/04/2010	Fri	8.00	PTO	400.00		
06/05/2010	Sat			400.00		
06/06/2010	Sun			400.00		
06/07/2010	Mon			400.00		
06/08/2010	Tue			400.00		
06/09/2010	Wed			400.00		
06/10/2010	Thu			400.00		
06/11/2010	Fri			400.00		
06/12/2010	Sat			400.00		
06/13/2010	Sun			400.00		
06/14/2010	Mon			400.00		
06/15/2010	Tue			400.00		
06/16/2010	Wed			400.00		
06/17/2010	Thu			400.00		
06/18/2010	Fri			400.00		
06/19/2010	Sat			400.00		
06/20/2010	Sun			400.00		
06/21/2010	Mon			400.00		
06/22/2010	Tue			400.00		
06/23/2010	Wed			400.00		
06/24/2010	Thu			400.00		
06/25/2010	Fri			400.00		
06/26/2010	Sat			400.00		
06/27/2010	Sun			400.00		
06/28/2010	Mon			400.00		
06/29/2010	Tue			400.00		