

MOHAVE COUNTY SUPERIOR COURT POLICY AND PROCEDURE

TITLE: 1.06 FAMILY AND MEDICAL LEAVE POLICY

EFFECTIVE DATE: 04/28/2011

REVISED DATE: 10/30/2018

- 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. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.
- 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. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on paid or unpaid leave during the week. 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 workweeks (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.

Spouse: means a husband or wife, including those in same-sex marriages.

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

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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:

- 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 employee's family member's (spouse, son, daughter, or parent) covered active duty or call to covered active duty status (or notification of an impending call or order to 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 to attend family support or assistance programs and informational briefings sponsored or promoted by the military, one of its service organizations or the American Red Cross that are related to the covered active duty or call to covered active duty status of the military member;

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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, immediate need basis (but not on a routine, regular or everyday 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 fifteen (15) calendar days with a covered military member who is on short-term, temporary rest and recuperation leave;

Post-deployment activities – to attend arrival 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 status;

Parental care: for certain activities related to the care of the covered military member's parent who is incapable of self-care where those activities arise from the military member's covered active duty, such as arranging for alternative care; providing care on a non-routine, urgent, immediate need basis; admitting or transferring the military member's parent to a new care facility; and attending certain meetings with staff at a care facility, such as meetings with hospice or social service providers; 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. A covered servicemember includes:
 - a. A current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status; or is otherwise on the temporary disability retired list, for a serious injury or illness; and
 - b. a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the employee takes FMLA leave to care for the veteran.
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.

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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 1) when medically necessary to care for a child, spouse or parent with a serious health condition or for the serious injury or illness of a covered servicemember; 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.

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

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

G. SAME EMPLOYER LIMITATION: A husband and wife who are both employed by Mohave County Superior Court 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 concurrently 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 all or a portion of the leave qualifies as FMLA leave the Court will designate the leave as FMLA-qualifying for that portion 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, while in the light duty assignment, the employee's right to job restoration (as described below) expires at the end of the applicable 12-month FMLA leave year, or when the employee has exhausted their FMLA leave entitlement, whichever occurs first.

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

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contributions will be required either through payroll deduction or by direct payment to the Benefits Division of Mohave County. The employee will be advised by the Benefits Division of Mohave County as to the amount and method of payment. Employee contribution amounts are subject to any change in rates that occur 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, the Superior Court posts the Notice to Employees of Rights Under FMLA (WHD Publication 1420) and provides all new hires with a copy. In addition, a link to the notice is provided at the end of this document.

2. **Designation of FMLA Coordinator:** The Clerk of Superior Court, the Chief Probation Officer and the Director of Juvenile Court Services 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, for military exigency leave, or to care for a covered military

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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 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 if an extension of the leave is requested, or every six (6) months, whichever occurs earlier. The Superior Court may also request recertification of the serious health condition of the employee or the employee's family member when the employee requests an extension of leave; when circumstances described by the previous certification have changed significantly; or if the Superior Court receives information casting doubt on the reason given for the leave or the validity of the leave. The Superior Court may also provide the employee's health care provider with the employee's attendance records and ask whether the need for leave is consistent with the employee's serious health condition.

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.

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.

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- 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.
- 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

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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.
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.
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 Superior Court Policies and 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](#)