

# FAMILY MEDICAL LEAVE ACT (FMLA)

## GUIDANCE FOR SUPERVISORS

The Family and Medical Leave Act, or FMLA, entitles eligible employees to take unpaid, job-protected leave for their own, or a qualifying family member's, serious medical condition. It also allows for military caregiver leave.

### *What is covered under the FMLA?*

- Employees may take up to twelve (12) weeks for the following reasons:
  - the birth of a child and to care for the newborn child within one year of birth;
  - the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
  - a serious health condition that makes the employee unable to perform the essential functions of their job; or
  - to care for the employee's qualifying family member who has a serious health condition.
    - A qualifying family member is: spouse; biological, adopted, or foster child, stepchild, legal ward, or child for whom an employee stands in *loco parentis*; parent (biological or legally adoptive parent or an individual who stands, or stood, in *loco parentis* to an employee when the employee was a child. This term does not include parents of an employee's spouse (e.g. "in-law").

### *Are there any other leave types covered under FMLA?*

- Eligible employees whose spouse, son, daughter or parent is on covered active military duty or called to covered active duty status may use their 12-week entitlement to address certain qualifying exigencies (urgent needs).
  - Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings in accordance with USERRA.
- FMLA also includes a special leave entitlement called "military caregiver leave" that permits eligible employees who are the spouse, son, daughter, parent, or next of kin of a covered service member, to take up to 26 weeks of leave to care for a covered service member, during a single 12-month period.
  - Next of kin is defined as the servicemember's nearest blood relative, other than the covered servicemember's spouse, parent, son or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles and first cousins.
  - A covered service member is 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; or

- a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

### *When is my employee eligible for FMLA?*

- An employee is eligible for leave if they have worked at least 1,250 hours over the past 12 months.

### *What if my employee approaches me about a serious medical issue they or their family member has?*

- If an employee starts to share medical information with you, remind them they should not disclose this information to you. Do not inquire about medical details or discuss the serious health condition with the employee or other staff. Medical details are considered confidential and should only be handled by Court Human Resources.
- If an employee expresses a need for FMLA, please direct them to contact Court HR at 520.866.5574, 520.866.5420 or [PinalSCHR@courts.az.gov](mailto:PinalSCHR@courts.az.gov). We can explain the purpose and importance of FMLA to the employee.

### *What if my employee does not request FMLA or refuses it altogether?*

- It is an employer's responsibility to notify its employees of their right to take FMLA.
- Under the FMLA law, employers may designate time as FMLA without the employee providing a Certificate of Medical Provider if it is determined the leave is related to a qualifying medical condition.
- If an employee refuses FMLA, but we have knowledge or reason to believe a serious medical condition exists (e.g. the employee is hospitalized or off work due to an occupational injury or provides documentation from a physician that supports the need for leave to care for a seriously ill family member), Court HR may designate the time off as FMLA. This ensures the employee receives the protection they are entitled to under the FMLA.

### *Whom determines if my employee qualifies for FMLA?*

- Court HR works with the employee to determine FMLA eligibility and if the medical condition qualifies under FMLA.
- Upon receiving a request for FMLA Court HR has five (5) days to provide the Notice of Eligibility, Rights & Responsibilities and Certificate of Medical Provider to the employee.
- The employee has fifteen (15) days to return the Certificate of Medical Provider to Court HR to review and approve the FMLA request. During the 15-day waiting period, the employee's

FMLA is conditionally approved. Court HR will notify the Department that the employee has requested FMLA.

- Once an employee is approved for FMLA, Court HR will provide the Department with date(s) of leave. Court HR will coordinate accommodations with the Department for any restrictions that may apply. The Department will not be given specific information about the medical condition.

### *Does my employee have to take all 12 weeks of FMLA off at one time?*

- No. An employee may take FMLA of up to 480 hours/12 weeks in a continuous block of a time, on an intermittent basis, or a combination of both. Court HR tracks the FMLA time used and notifies the employee when they are nearing the end of their FMLA allotment.
- If the FMLA is intermittent, the employee is required to request the time off using their Department's leave request and/or call in procedures. You may ask the employee if the absence is related to FMLA for timecard approval. The employee must also notify Court HR of FMLA time off for departmental notifications and tracking purposes.

### *Can my employee flex out their FMLA time?*

- No. An employee cannot adjust their schedule or flex time for FMLA-related appointments. All FMLA time must be reported on timesheets to ensure hours are accurately tracked in the timekeeping system.

### *Can I contact my employee while they are out on FMLA?*

- No. You should not contact your employee while they are out on FMLA. Please contact Court HR if you believe there is an urgent need to contact the employee.

### *Who processes my employee's FMLA timesheets?*

- Effective June 1, 2018, the direct Supervisor or department time keeper will complete timesheets for those on Continuous FMLA. Court HR will provide the time keeper with information as to if they are approved for STD and how many hours they have used for that pay period.
  - During a continuous FMLA leave, for ease of tracking FMLA usage, the department completes timesheets based on a regular forty-hour work week schedule. This has no impact on the employee's actual schedule if they work a flex schedule.
- If an employee is on intermittent FMLA, the employee is responsible for completing their own timesheet.
  - Timekeepers are to then send a copy of the finalized timecard to Court HR for record keeping and tracking purposes.

*What if my employee is released to return to work with restrictions and they are not able to perform their essential job functions?*

- Following an absence for their own serious medical condition, an employee is required to provide a fitness-for-duty certification (release) from their physician as a condition to return to work.
- If the release indicates restrictions that prohibit the employee from performing their position's essential job functions, Court HR will work with your Department Director to accommodate the employee's return to work in a modified capacity. The employee may be placed in a position within another Court Department in order to accommodate their restrictions.

*What if my employee returns to work following an absence for their own serious health condition but does not provide a release?*

- If an employee returns to work without a release, we may refuse to allow the employee to resume their job until a release is provided. Please direct the employee to contact Court HR for follow up.

If you have additional questions, need more information or guidance about FMLA leaves, please contact Court HR.