



## Family Medical & Military Family Leave Policy

<b>Original Effective Date:</b> July 27, 2017	<b>Review / Revision Date:</b> August 13, 2018	<b>Board of Health Resolution:</b> BOH 2017.07.097
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**Maintenance Steward:** Director of Human Resources      **History:**  New    Revised    Archived

**Organizational Scope:**

Full Agency    Administration    Community Services    Environmental Health    Health Services

**Frequency of Review:**

Annually    Biennially    5 Years    As Needed    Other:

**Location:**

*G-Drive:* G: → Users → Common → Policies & Procedures

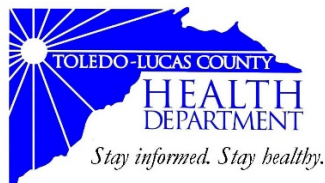
*Website:* [www.lucascountyhealth.com/employee-login/](http://www.lucascountyhealth.com/employee-login/)

*Hardcopy:* TLCHD Policies & Procedures Manual, HR Office

*Archived Version(s):*

### Requisite Signatures

- |  |                                |
|--|--------------------------------|
| <input checked="" type="checkbox"/> _____<br>Board of Health President                             | _____<br>Date <u>7/27/2017</u> |
| <input checked="" type="checkbox"/> _____<br>Health Commissioner                                   | _____<br>Date <u>07-28-17</u>  |
| <input checked="" type="checkbox"/> _____<br>Director of Administrative Services                   | _____<br>Date _____            |
| <input checked="" type="checkbox"/> _____<br>Director of Environmental Health & Community Services | _____<br>Date <u>7-28-2017</u> |
| <input checked="" type="checkbox"/> _____<br>Director of Health Promotion & Policy Integration     | _____<br>Date <u>7/27/2017</u> |
| <input checked="" type="checkbox"/> _____<br>Director of Health Services                           | _____<br>Date <u>7-31-17</u>   |
| <input checked="" type="checkbox"/> _____<br>Director of Human Resources                           | _____<br>Date <u>7-31-17</u>   |



## Family Medical & Military Family Leave Policy

### I. Policy

It is the policy of the Toledo-Lucas County Health Department that employees are entitled to take leave for up to 12 work weeks of leave in a 12 month period for certain family and medical reasons in accordance with the Family & Medical Leave Act of 1993 (FMLA). Additionally, eligible employees are entitled to take leave related to military service for up to 12 to 26 work weeks in a 12 month period.

### II. Scope

This policy applies to all eligible staff of the Toledo-Lucas County Health Department.

### III. Purpose

The purpose of this policy is to establish the rights and obligations of employees and the Health Department covered under the federal regulations of FMLA.

### IV. Eligibility

- A. An eligible employee is defined as having been employed by the Health Department for at least twelve (12) months, and having worked at least 1,250 hours during the 12-month period preceding the date leave is to begin. The twelve (12) month period need not be contiguous.
  - 1. The 1,250 hours must be "actual time worked" and excludes any periods of paid or unpaid leave.
  - 2. The 12-month period in which the 12 to 26 workweek of FMLA entitlement will be measured is a rolling period measured backward from the date the leave commences.

### V. Reasons for Taking Leave

- A. Eligible employees are entitled to family and medical leave for any of the following reasons:
  - 1. The birth of the employee's child, to care for the employee's child after birth, or placement for adoption or foster care;
  - 2. For pre-natal care and incapacity due to pregnancy;
  - 3. To care for the employee's spouse, child, or parent who has a serious health condition; or
  - 4. For a serious health condition that makes the employee unable to perform their job.

- B.** A serious health condition for family and medical leave refers to an illness, injury, impairment, or physical or mental condition that involves either:
1. Any period of incapacity or treatment connected with inpatient care (and overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such inpatient care; or
  2. Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:
    - a. A health condition (including treatment and recovery) lasting more than three (3) full consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
      - i. In-person treatment at least once within seven (7) days of the first day of incapacity, and
      - ii. A continuing treatment regimen initiated by the health care provider during the first treatment, or a second in-person visit for treatment within 30 days of the first day of incapacity, the necessity of which to be determined by the health care provider.
    - b. Pregnancy or prenatal care;
    - c. A chronic, serious health condition which requires visits for treatment by a health care provider at least twice per year, continues over an extended period of time (including recurring episodes of a condition), and may involve occasional episodes of incapacity rather than a continuing period of incapacity (e.g., asthma, diabetes).
    - d. A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or
    - e. Any absences to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

## **VI. Military Leave Provisions**

- A.** Eligible employees are entitled to military family leave for any of the following reasons:
1. Eligible employees are permitted to take up to 12 weeks leave due to "any qualifying exigency" arising from the fact that a related covered service member (spouse, child, or parent) is on covered active duty or has been notified of an impending call to covered active

duty status in support of a contingency operation as designated by the Secretary of Defense or as a matter of law.

- a. The leave commences as soon as the individual receives the call-up notice. This type of leave would count toward the employee's 12 week maximum of FMLA leave in a 12-month period.
2. The "*qualifying exigency*" must be one of the following:
- a. Short notice deployment defined as a call/order to active duty seven (7) days prior to the date of deployment (limited to seven (7) days of leave beginning on the date the military member is notified of deployment);
  - b. Military events and activities related to a call to active duty;
  - c. Childcare and school activities (e.g. arranging for alternative child care, providing child care on an urgent or immediate needs basis, enrolling children in new school or day care, attending meetings with school or day care staff);
  - d. To make or update financial and legal arrangements to address a military member's absence;
  - e. Attend counseling provided by someone other than a health care provider;
  - f. Rest and recuperation (maximum 15 days per leave, up to 12 weeks in a 12 month period, to spend time with military member on short-term leave);
  - g. Post deployment activities (up to 90 days following termination of active duty);
  - h. Parental care: time off to arrange care for parents of military members who are incapable of self-care when the need for leave arises as a result of active duty or call to active duty. Cannot be used for routine day-to-day care;
  - i. Additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of leave.
3. Eligible employees are permitted to take up to 26 weeks of leave to care for a related covered service member or covered veteran (spouse, child, or parent) who is recovering from a serious illness or injury sustained in the line of active duty, or a serious illness or injury that existed before, and was aggravated by, the member's service in the line of duty.
- a. The military care giver leave is available in a single 12 month period during which an employee is entitled to a combined total of 26 weeks of all types of FMLA leave.

## VII. Application for Leave

- A. An employee needing leave is required to provide their immediate supervisor with notice of their need for FMLA leave.**
1. An employee requesting FMLA leave must explain the reasons leave is necessary to ensure the requested leave qualifies for FMLA. If the employee fails to explain the reason(s), leave may be denied.
    - a. Notice should include enough information to make the Health Department aware that the employee needs FMLA qualifying leave, and the anticipated timing and duration of the leave.
  2. **Failure to provide timely notice may result in a delay, or denial, of the leave.** This may result in the absence being considered unexcused, which may subject the employee to disciplinary action up to and including discharge.
- B. Employees are required to complete and submit all appropriate leave of absence forms consistent with the provisions of this policy:**
1. Initial FMLA Paperwork
    - a. *Application for Family or Medical Leave*
  2. Medical Certification Form(s)
    - a. *Certification of Health Care Provider for Employee's Serious Health Condition; or*
    - b. *Certification of Health Care Provider for Family Member's Serious Health Condition*
  3. Military FMLA Forms / Required Information
    - a. Active Duty Orders
    - b. *Certification of Qualifying Exigency for Military Family Leave*
    - c. *Certification for Serious Injury or Illness of a Current Service member- for Military Family Leave*
  4. After an employee completes and returns the initial FMLA application, they will receive a copy of the FMLA Employer posting, a copy of the FMLA Policy, the *Notice of Eligibility and Rights & Responsibilities* form, the *Certification or Health Provider for Employee's Serious Health Condition* form **or** *Family Member's Serious Health Condition* form, and when applicable, an FMLA physician return to work form.
    - a. Upon receipt of the completed *certification of Health Provider for Employee's Serious Health Condition* form **or** the *Family Member's Serious Health Condition* form, Human Resources will issue a *Designation Notice* form.
      - i. The same process applies to Military Leave requests noted above.

- b. The certification form must be completed and returned to the Department of Human Resources within fifteen (15) calendar days of receiving the *Notice of Eligibility*.
  - c. If it is not practicable under the specific circumstances to submit the certification form to the HR department, the notice must be provided as soon as reasonable under the specific circumstances.
  - d. If the certification is incomplete or insufficient, the employee will be provided seven (7) days to correct any deficiencies. It is the employee's responsibility to provide the Health Department with complete and sufficient certification.
  - e. Failure to submit a certification form, failure to submit a fully completed and sufficient certification form, submission of an inaccurate or falsified certification form, or failure to submit such form in the time-frames provided herein may result in a delay or denial of the FMLA leave and/or subject the employee to discipline up to and including termination.
5. Staff are encouraged to contact the Human Resources representative for an initial FMLA application and information on how to process a leave request.

**C. Minimum amount of required notice under FMLA:**

- 1. An employee requesting leave should provide as much advance notice as possible to allow work arrangements to be made for the seamless operation of department programs.
- 2. **When the need to leave is foreseeable** due to an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee, employee's relation (spouse, child, or parent), or planned medical treatment for the serious health condition of a covered service member, the employee must provide **30 days advance notice** to their immediate supervisor.
  - a. For foreseeable leave due to qualifying exigency, notice must be provided as soon as practicable.
  - b. If 30 days' notice is not possible, due to uncertainty of when leave will begin, or the timing of leave is otherwise unforeseeable due to a change in circumstance or medical emergency, notice of need for FMLA leave must be provided to an employee's immediate supervisor as soon as possible.
  - c. If the dates of scheduled leave change or are extended, the employee will be responsible for notifying their immediate supervisor as soon as possible.

d. Employees may be required to provide explanation of the reasons that 30 days' prior notice was not possible.

3. **Special rules apply when the employee fails to give advance notice of need for FMLA leave**, and the Health Department does not learn the reason for absence until the employee's return (e.g. where the employee was absent for only a brief period).

a. If TLCHD does not designate the leave as FMLA leave and the employee desires it to be counted as such, the employee **must, within two (2) business days after returning to work**, notify TLCHD the leave was for an FMLA reason.

b. Without timely notification by the employee, the leave will not be counted as FMLA and the employee cannot subsequently assert FMLA protections for the absence.

4. Employee's utilizing FMLA leave are required to report periodically on their intent to return to work.

a. If an extension beyond the anticipated leave end date is required, the employee must provide reasonable notice to their immediate supervisor, and no later than two (2) business days after learning of the need for an extension of leave.

b. If the employee is able to return to work earlier than expected, they must provide TLCHD with reasonable notice as soon as possible but not later than two (2) days from when the employee learns they will be able to return to work earlier than expected.

**D. As soon as practicable** means both possible and practicable taking into account all the facts and circumstances; generally at least verbal notification within one or two working days of learning of the need for leave.

## VIII. How Leave May be Taken

**A. Continuous Basis:** a certain number of days or weeks in a row.

**B. Intermittent Basis:** when medically necessary for leave involving serious health conditions, leave may be taken in separate blocks of time due to a single qualifying reason.

**C. Reduced Schedule Basis:** a leave schedule that reduces the usual number of hours per workweek or hours per day.

**D.** Employee's requesting intermittent or reduced schedule leave must fulfill all obligations described in this policy (e.g., advance notice requirements, request for leave of absence forms, medical certification, etc.), especially in cases of planned medical treatment.

1. The employee must advise TLCHD on the schedule for treatment, if applicable. Employees must consult with their supervisor and attempt to make a reasonable effort to schedule leave that meets the employee's needs without unduly disrupting the Health Department's operations, subject to the approval of the health care provider.

#### **E. Substitution of Paid Leave**

1. **The Family Medical Leave Act of 1993 does not require the leave to be paid.**
  - a. If an employee requests and takes FMLA leave and/or TLCHD determines the leave meets the requirements under FMLA, **any accrued sick days, paid vacation, personal days, compensatory time, and bonus time** will be applied to the FMLA leave period until such paid leave time is exhausted. The remainder, if any, of the FMLA leave period will be unpaid.
2. For the purposes of Family & Medical leave enumerated in section (V)(A)(1-4) and section (VI)(A)(3), employees are required to exhaust all paid sick leave, vacation leave, personal days, compensatory time, and bonus time, **in that order**, prior to receiving an unpaid leave.
3. **The FMLA leave period will run concurrently with all other leaves, paid or unpaid**, made available to TLCHD employees including all forms listed in (VIII)(E)(2) above, as well as voluntary/involuntary disability separation, disability retirement (PERS), and any leave in conjunction with worker's compensation.
4. TLCHD's policies and procedures and applicable collective bargaining agreement provisions for taking any type of paid or unpaid leave shall be applied when requesting and receiving FMLA leave.

#### **IX. Subsequent Recertification**

- A. The Health Department may **require subsequent medical recertification every 6 months for the serious health condition of the employee or the employee's family member as listed herein**. Medical recertification may be required at intervals earlier than 6 months under the following conditions:
  1. Circumstances described by the previous certification have changed significantly (e.g., the duration/frequency of absences, pattern of absences before/after scheduled days off or longer duration of absences than specified on the certification for most recent 2 or more episodes of incapacity, the nature/severity of the condition, complications).
  2. The Health Department received information that casts doubts on the employee's stated reason for the absence.
  3. The employee requests an extension of leave.



- B. For FMLA leave taken intermittently, or on a reduced leave schedule basis, the Health Department may not request recertification in less than the minimum period specified on the certification as necessary for such leave (including treatment) unless one of the conditions set forth in section (IX)(A) parts 1, 2, or 3 above are met.
- C. The employee must provide the completed recertification to the Health Department within 15 calendar days after the Health Department has requested such recertification, unless it is not practicable under the particular circumstances to do so, despite diligent, good faith efforts by the employee. If the medical recertification is incomplete or insufficient, the employee will be provided 7 days to correct the deficiencies.
- D. Failure to submit a recertification form, failure to submit a **fully completed and sufficient** recertification form, submission of an inaccurate or falsified recertification form, or failure to submit such form in the time-frames provided herein may result in a delay or denial of the FMLA leave and/or subject the employee to discipline up to and including termination.
- E. Any recertification requested by the Health Department shall be at the employee's expense unless the Health Department provides otherwise. A second or third opinion may be required on recertification.
- F. Recertification as provided herein cannot be required for qualifying exigency leave or military caregiver leave.

#### **X. Return to Work Certification**

- A. As a condition of an employee returning from FMLA leave, TLCHD may require the employee to obtain and present certification from the employee's healthcare provider that they are able to return to work, i.e., fitness-for-duty certification.
  - 1. An employee's return to work certification shall be subject to, and consistent with, relevant and applicable provisions of the Ohio Administrative & Revised Codes as well as any collective bargaining agreement provisions with regards to sick leave and leaves of absence.
  - 2. Additionally, requirements under the Americans with Disabilities Act (ADA) that any return-to-work physical examination be job related and consistent with business necessity shall apply.
- B. Fitness-for-duty Certification may only be sought in regards to the particular health condition that caused the employee's need for FMLA leave.
  - 1. A *Fitness-for-Duty Certification Form* shall be provided to the employee and include a statement of the employee's ability or inability to return to work from their health care provider.

2. The cost of certification shall be borne by the employee. Costs spent in acquiring the certification, including time or travel costs, shall not be reimbursed.
  - a. The Health Department may delay restoration to employment until an employee submits a required fitness-for-duty certification. This is not required for employees who take intermittent FMLA leave.

- C. Failure to complete and submit the fitness-for-duty certification or untimely submission of the same may result in the delay of job restoration and/or disciplinary action up to and including termination.
- D. Incomplete, inaccurate, or falsified fitness-for-duty certification forms may result in a delay or job restoration and/or disciplinary action up to and including termination.

## **XI. Job Restoration and Benefits Protections**

- A. Upon return from FMLA leave (not exceeding 12 weeks), an employee must generally be restored to his/her position or to an equivalent position in terms of pay, benefits, responsibilities and authority.
- B. Job restoration rights are subject to all requirements of this policy (e.g., notification, medical certification, collective bargaining provisions, etc.). Failure to comply with this policy may result in a delay of job restoration and/or disciplinary action up to and including termination.

### **1. Exceptions to restoration:**

- a. An elimination of a position that would have terminated the employee's job or placed him/her in a different job.
  - b. Job restoration may be denied to certain \*key employees\* who are salaried employees and among the 10% highest paid of all TLCHD employees, if such action is necessary to avoid substantial and grievous economic injury to the operations of the Department. Employees will be notified in writing at the time FMLA leave is requested whether they are considered key employees for purposes of this provision.
- C. The use of FMLA leave cannot result in the loss of any employment benefit that occurred prior to the start of an employee's leave, and the FMLA leave period will be treated as continued service for the purposes of determining seniority and eligibility to participate in pension or other retirement plans.
    1. An employee does not accrue any other benefits during the FMLA period, nor does the FMLA leave period entitle the employee to any greater rights that he/she would have had if he/she had remained in the workplace. However, an employee who takes FMLA leave will not lose any seniority benefits that accrued before the date leave began.

2. Additionally, an employee is not entitled to accrue any employment benefits that would have accrued if not for taking unpaid leave; specifically, an employee is not entitled to accrue sick and vacation leave during the unpaid portion of FMLA leave, if any.

## **XII. Maintenance**

### **A. Review**

1. The *Family Medical & Military Family Leave Policy* is to be reviewed annually to ensure compliance with agency, accreditation, and federal standards.
2. Changes to the Family & Medical Leave Act of 1993 shall also initiate a review of this policy.

### **B. Revision**

1. All changes made to this policy are to be noted on the **Record of Change**. Substantial changes will require renewed signatures from all applicable parties. This includes changes to the intent, scope, procedures, or policy statement.
2. Changes in style, format, grammar or minor error correction will not require renewed signatures but must be indicated on the Record of Change.

## **XIII. Glossary**

- A. Covered Service Member:** is defined as a current member of the Armed Forces, including a member of the National Guard or Reserves, is defined as a person who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retirement list, for a serious injury or illness.
- B. Covered Veteran:** is defined as one who is undergoing medical treatment, recuperation, or therapy for a serious illness or injury and 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.
- C. Covered Active Duty / Call to Covered Active Duty Status (Regular):** In the case of a member of the regular Armed Forces, “covered active duty or call to covered active duty status” means duty during the deployment of the member with the Armed Forces to a foreign country.
- D. Covered Active Duty / Call to Covered Active Duty Status (Reserves):** In the case of a member in the Reserved components of the Armed Forces, “covered or active duty or call to a covered active duty status” means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation.

# Record of Change

(Required for all policies)

Date of Change	Changes Made By	Changes Made/Notes	Approved By
8/13/2018	BP	During review by TLCHD staff the Personnel Committee on 8-13-18, this policy's content was found to be accurate, sufficient, and current.	Personnel Committee