

Reservists activated beyond 15 days per year shall be placed on unpaid leave of absence as provided by law for the period of their activation. Activated reservists may elect to use accrued vacation leave in lieu of leave without pay. Upon involuntary activation during an armed conflict, an employee or County Official who enrolls in COBRA to continue medical benefits shall be entitled to receive reimbursement for the County's contribution to health care up to a maximum of six months. Contributions beyond six months must be requested in writing prior to the end of the six-month period and will be considered at the discretion of the Board of Commissioners.

12.2 Spousal Military Deployment Leave

An employee who works an average of 20 or more hours a week and who is a spouse or registered domestic partner of a military service member may take up to 15 days of unpaid leave while the military service member is on leave from deployment, or before and up to deployment, during times of military conflict declared by the President or Congress. The employee must provide their County Official and Human Resources with notice of intent to take leave within 5 business days of receiving official notice that the employees' spouse will be on a leave or of an impending call to duty.

12.3 Washington Family Care Leave Act

The Washington Family Care Leave Act allows benefit-eligible employees who have unused accrued leave to take such leave subject to the following conditions.

If the reason for the leave is the serious health condition of a spouse, registered domestic partner, parent, parent-in-law, or grandparent, or child's illness, the County may require the employee to utilize and be subject to conditions of Family Medical Leave concurrently with Washington Family Care Leave.

(1) Reasons for Washington Family Care Leave

An employee may use paid sick leave or other accrued leave to care for the following:

- a. A child of the employee that needs treatment or supervision
- b. A spouse, registered domestic partner, parent, parent-in-law, or grandparent with a serious health condition or emergency condition

(2) Definitions for Purposes of this Section

"Child" means biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is (a) under 18 years of age, or b) 18 years of age or older and incapable of self-care because of a mental or physical disability.

"Domestic Partner" as used in the Revised Code of Washington is defined to mean "state registered domestic partner."

"Emergency Condition" is defined as a "health condition that is a sudden, generally unexpected occurrence or set of circumstances demanding immediate action and is typically very short-term in nature."

"Grandparent" means a parent of a parent of an employee.

"Health Condition that requires treatment or supervision" includes:

- a. Any medical condition requiring treatment or medication that the child cannot self-administer;
- b. Any medical or mental health condition which would endanger the child's safety or recovery without the presence of a parent or guardian; or
- c. Any condition warranting treatment or preventative health care such as physical, dental, optical or immunization services, when parent must be present to authorize and when sick leave may otherwise be used for the preventative health care.

"Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in several of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

"Parent" means a biological or adoptive parent of an employee or an individual who stood *in loco parentis* to an employee as a child.

"Parent-in-law" means a parent of the spouse of an employee.

"Physical or mental disability" means a physical or mental impairment that limits one or more activities of daily living or instrumental activities of daily living.

"Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment or recovery in connection with such inpatient care; or that involves continuing treatment by or under the supervision of a health care provider or a provider of health care services and which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities).

"Sick leave or other paid time off" means time allowed under the terms of an appropriate collective bargaining agreement or employer policy, as applicable, to an employee for illness, vacation, and personal holiday.

"Spouse" means a husband or wife, as the case may be.

(3) Employee Required to Notify County

Employees are required to follow procedures detailed in section 4.7 of the policy in order to provide notice under the Washington Family Care Act.

12.4 Family Medical Leave Act

It is the policy of Clallam County to grant up to 12 weeks of family and medical leave during any 12-month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA) and/or 26 weeks under the provisions of the National Defense Authorization Act for FY 2008. The County considers any sick or disability leave, or workers compensation leave that qualifies under the Family Medical Leave Act to be subject to and part of Family Medical Leave. Sick and disability leaves including pregnancy-related disability shall run concurrent with FMLA. The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances and as specified in this policy. Rights under Family Medical Leave Act may not be utilized to pursue other gainful employment.

(1) Reasons Family Medical Leave may be Granted

Leave may be granted for the following reasons:

- a. The birth of a child and in order to care for such child or the placement of a child with the employee for adoption or foster care (leave for this reason must be taken within the 12 month period following the child's birth or placement with the employee).
- b. In order to care for an immediate family member (spouse, child, or parent) of the employee if such immediate family member has a serious health condition.
- c. The employee's own serious health condition that makes the employee unable to perform the functions of his/her position.
- d. For the care of a spouse, parent, child, or "next of kin" who is a member of the Armed Forces, including a member of the National Guard or Reserves, and certain veterans 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.
- e. For "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty (or has been

notified of an impending call or order to active duty) in the Armed Forces, National Guard or Reserves in support of a contingency operation.”

(2) Definitions

For purposes of this section, the following definitions apply:

"12 Month Period" means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.

"Spouse" means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides, including common law marriage in States where it is recognized. Spouse does not include unmarried domestic partners. If both spouses work for Clallam County their total leave in any 12-month period may be limited to an aggregate of 12 weeks if the leave is taken for either the birth or placement for adoption or foster care of a child or to care for a sick parent.

"Son or Daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability."

"Incapable of self-care" means that the individual requires active assistance or supervision to provide daily self-care in three or more of the "activities of daily living (ADL) or "instrumental activities of daily living" (IADLs). Activities of daily living include adaptive activities such as caring appropriately for one's grooming and hygiene, bathing, dressing, and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, using a post office, etc.

"Physical or mental disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual.

"Persons who are 'in loco parentis'" include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary. For purposes of confirmation of family relationship, the County may require the employee giving notice of the need for leave to provide reasonable documentation or statement of family relationship. This documentation may take the form of a single statement from the employee, or a child's birth certificate, a court document, etc. The County is entitled to examine documentation such as a birth certificate,

etc., but the employee is entitled to the return of the official document submitted for this purpose.

"Parent" means a biological parent or individual who stands or stood in loco parentis to an employee when the employee was a child. It does not include parents "in-law."

"Any qualifying exigency" to be defined by the Secretary of Labor in the issuance of final regulations.

"Serious health condition" means an illness, injury, impairment, or a physical or mental condition that involves:

- a. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from), or any subsequent treatment in connection with such inpatient care; or
- b. Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; OR
 - Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
 - Any period of incapacity due to pregnancy, or for prenatal care.
 - Any period of incapacity or treatment for such incapacity due to a chronic serious health condition.
 - A chronic serious health condition is one which:
 - Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of 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 (e.g., asthma, diabetes, epilepsy, etc.).

- 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. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
- Any 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, either 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 consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), kidney disease (dialysis).
- Treatment for purposes of paragraph (a) of this section includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. A regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.
- Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths is serious health conditions providing all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.
- Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only

be taken for treatment for substance abuse by a health care provider or by a provider for health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

- Absences attributable to incapacity may qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to say home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

"Employee is unable to perform the functions of the position of the employee" means when the health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential function of the employee's position within the meaning of the Americans with Disabilities Act. An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment. The County has the option, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review.

"Health care provider" includes doctors of medicine or osteopathy authorized to practice in the state in which the doctor practices, any other person determined by the Secretary of Labor to be capable of providing health care services such as podiatrists, dentist, clinical psychologist, optometrists, chiropractors, nurse practitioners and nurse mid-wives. Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts are also health care providers. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from the County that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner.

"Needed to care for a family member" encompasses both physical and psychological care. It includes situations where, for example, because of a serious health condition, the family member is unable to care for his or her own basic medical, hygienic, or nutritional needs or safety, or is unable to transport himself or herself to the doctor, etc. The terms also includes providing

psychological comfort and reassurance which would be beneficial to a child, spouse or parent with a serious health condition who is receiving inpatient or home care. The term also includes situations where the employee may be needed to fill in for others who are caring for the family member, or to make arrangements for changes in care, such as transfer to a nursing home. An employee's intermittent leave or a reduced leave schedule necessary to care for a family member includes not only a situation where the family member's condition itself is intermittent, but also where the employee is only needed intermittently -- such as where other care is normally available, or care responsibilities are shared with another member of the family or a third party.

"Intermittent FMLA leave or leave on a reduced leave schedule" for intermittent leave or leave on a reduced leave schedule, there must be a medical need for leave (as distinguished for voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition meets the requirement for certification of the medical necessity of intermittent leave or leave on a reduced leave schedule. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the County's operations. As an alternative, the County may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule. For example:

- a. When leave is taken after the birth or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the County agrees. Such a schedule reduction might occur where an employee, with the County's agreement, works part-time after the birth of a child, or takes leave in several segments. The County's agreement is not required, however, for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.
- b. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition. It may also be taken to provide care or psychological comfort to an immediate family member with a serious health condition. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy. A pregnant employee may take leave intermittently for prenatal examinations or for her own conditions, such as for periods of severe morning sickness. An example of an employee taking leave on a

- reduced leave schedule is an employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule.
- c. Intermittent or reduced schedule leave may be taken for absences where the employee or family member is incapacitated or unable to perform the essential functions of the position because of a chronic serious health condition even if he or she does not receive treatment by a health care provider.

There is no limit on the size of an increment of leave when an employee takes intermittent leave or leave on a reduced leave schedule.

"Other circumstances beyond the employee's control" includes spouse's unexpected transfer to a job more than 75 miles from the employee's work site, a relative or individual other than an immediate family member has a serious health condition and the employee is needed to provide care, the employee is laid off while on leave; or the employee is a key employee who decides not to return to work after being notified of the County's intention to deny restoration of the position. A parent's decision not to return to work after the birth or adoption of a child is not a condition beyond the employee's control.

"Key employee" means the top 10 percent highly compensated employees.

(3) Coverage and Eligibility

To be eligible for family/medical leave an employee must:

- a. Work at a work site which has 50 or more employees or be within 75 miles of a work site that has 50 or more employees;
- b. Have worked for Clallam County in a regularly benefited position for at least 12 months; and
- c. Have worked at least 1250 hours over the previous 12-month period. For part-time employees and those who work variable hours, the family and medical leave entitlement is calculated on a pro rata basis. A weekly average of the hours worked over the 12 weeks prior to the beginning of the leave should be used for calculating the employee's normal workweek.

(4) Use of Accrued Sick and Vacation Time Required

An employee will be required to use accrued sick and vacation leave for any part of a family/medical leave taken for any reason. When an employee has exhausted all paid leave time for a portion of a family/medical leave, the employee may request the additional period of FMLA leave as unpaid leave to be granted so that the total of paid and unpaid leave provided equals no more than 12 weeks.

(5) Leave to Run Concurrently

Work Related Disability Leave (Workers Compensation) shall run concurrent with leaves of absence granted under FMLA leave when the injury is one that meets the criteria for a serious health condition. The Human Resource Department is responsible to assist employees in coordinating concurrent leaves.

(6) Notice Requirements

An employee is required to give a 30-day notice in the event of a foreseeable leave under FMLA. A "Request for Family/Medical Leave" form shall be completed by the employee and returned, through the County Official, to the Human Resource Department. In unforeseeable or emergency situations, notice requirements are those for use of sick leave, followed by a completed "Request for Family/Medical Leave" form.

If an employee fails to provide 30 days notice of foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date the employer receives notice. While on leave, employees are requested to report periodically to the County regarding the status of the medical condition, and their intent to return to work.

In the event an employee fails to give notice of FMLA leave and the County has acquired knowledge that the leave is being taken for FMLA required reasons, the County will absent extenuating circumstances, notify the employee that the paid leave is designated and will be counted as FMLA leave. If the notice is oral, it shall be confirmed in writing, no later than the following payday (unless the payday is less than one week after the oral notice, in which case the notice must be no later than the subsequent payday).

(7) Medical Certification Required

For leaves taken because of the employee's or a covered family member's serious health condition, the employee must submit a completed "Physician or Practitioner Certification" form and return the certification to the Human Resource Department. Medical certification must be provided by the employee within 15 days after requested, or as soon as reasonably possible.

Clallam County may require a second or third medical opinion (at its own expense), annual medical certifications, periodic reports on the employee's status and intent to return to work, and a fitness-for-duty report to return to work.

All documents related to the employee's or family member's medical condition will be held in strict confidence and maintained in the employee's medical records file.

(8) Effect of Family Medical Leave on Benefits

An employee granted a leave under this policy will continue to be covered under Clallam County group health insurance plan and life insurance plan under the same conditions as coverage would be provided if they had been continuously employed during the leave period.

Employee contributions will be required either through payroll deduction or by direct payment to Clallam County. Direct payment of employee out-of-pocket contribution must be received by Human Resources no later than the first business day of the month. The employee will be advised in writing at the beginning of the leave period 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.

If an employee's contribution is late, Clallam County may terminate the employee's insurance coverage for non-payment.

If Clallam County pays the employee contributions missed by the employee while on leave, the employee will be required to reimburse the County for delinquent payments (on a payroll deduction schedule) upon return from leave. The employee shall be required to sign and return to the County, a "Self-pay Medical Benefits Election Form" at the beginning of the leave period authorizing the payroll deduction for delinquent payments.

If the employee fails to return from unpaid family/medical leave for any reason other than the continuation, recurrence, or onset of a serious health condition, or other circumstances beyond the employee's control, Clallam County may seek reimbursement from the employee for the portion of premiums paid by Clallam County on behalf of the employee (also known as the employer contribution) during the period of leave and the health care premiums owed to the County become a debt, which is legally collectible.

An employee is not entitled to seniority or other employment benefit accrual during periods of unpaid leave but will not lose anything accrued prior to the leave.

An employee who fails to return from unpaid family/medical leave shall be entitled to continue health care benefits as set forth under COBRA.

(9) Job Protection

If the employee returns to work within 12 weeks following a family/medical leave, he/she will be reinstated to his/her former position or an equivalent position with equivalent pay, benefits, status and authority.

The employee's restoration rights are the same as they would have been had the employee not been on leave. Thus, if the employee's position would have been eliminated or the employee would have been terminated but for the leave, the employee would not have the right to be reinstated upon return from leave.

(10) Non-Application to "Key Employees"

Highly compensated (top 10 percent) employees can be denied reinstatement if necessary to prevent substantial and grievous economic injury to the operation of the County. The County shall give written notice to such "key employees" and inform them of their risks when leave is requested, or at such time when the County determines that it will sustain substantial and grievous economic injury.

If the employee fails to return within 12 weeks following a family/medical leave, the employee may be reinstated to his/her same or similar position, only if available, in accordance with applicable laws. If the employee's same or similar position is not available, the employee may be terminated.

An employee found to have been otherwise gainfully employed during authorized FML may be denied reinstatement and be terminated from County employment.

(11) Appeal Procedure

Clallam County has adopted an internal appeal procedure providing for prompt and equitable resolution of complaints alleging any action prohibited by the Family and Medical Leave Act. Employees are encouraged to seek dispute resolution under the provisions of the County's Appeal, Grievance, and Fair Treatment Policy as set forth in these Administrative Policies and Procedures. Employees who do not wish to utilize the Appeal, Grievance, and Fair Treatment Policy may contact the U.S. Department of Labor, Wage, and Hour Division.

12.5 Pregnancy Disability Leave

It is the policy of the County to grant paid or unpaid, leave of absence for pregnancy disability under the provisions of Washington Family Care Leave Act, RCW Chapter 49. Such leave of absence shall be for sickness or temporary disability because of pregnancy or childbirth.