



# Medina County Policy Manual

Policy: <b>Family Medical Leave</b>	Section: <b>Time Off</b>	Number: <b>4.010</b>
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Previous Res. 08-528

## I. FMLA Leave Qualifying Reasons

### A. Non-Military circumstances (§ 825.112)

1. For the birth of a child and to care for a newborn child of *the employee*.
2. For the placement with *the employee* of a child for adoption or foster care.
3. For a serious health condition that renders *the employee* unable to perform the functions of the employee's job.
4. To care for the employee's spouse, dependent child, or parent with a serious health condition.
  - a. A serious health condition involves continuing treatment by a health care provider that includes any one or more of the following (§ 825.113):
    - i Incapacity and treatment for a period of more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves (§ 825.115):
      - i-1 In-person treatment on two (2) or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, 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
      - i-2 In-person 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.
    - The first in-person treatment visit must take place within seven (7) days of the first day of incapacity.

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- The term “extenuating circumstances” is considered to be beyond the employee’s control that prevents the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts, ex. the health care provider determines that a second in-person visit is needed within the 30-day period does not have any available appointments during that time period.
- ii For any period of incapacity due to pregnancy, or for prenatal care.
  - iii For a any period of incapacity or treatment for such incapacity due to a chronic serious health condition which requires:
    - iii-1 Periodic visits at least twice a year for treatment by a health care provider, or by a nurse or physician’s assistant under direct supervision of a health care provider;
    - iii-2 Continues over an extended period of time (including recurring episodes of a singly underlying condition); and,
    - iii-3 May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)
  - iv For permanent or long-term conditions where the period of incapacity 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.
  - v For conditions requiring multiple treatments where 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, is for:
    - v-1 Restorative surgery after an accident or other injury; or

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v-2 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).

vi For absences attributable to incapacity due to pregnancy, or for prenatal care, or for such incapacity due to a chronic serious health condition will qualify for FMLA leave even though the employee or the covered 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 (3) consecutive, full calendar 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 stay 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.

B. Military circumstances for FMLA Leave (§ 825.126)

1. For any "*qualifying exigency*" arising out of the employee's spouse, son, daughter, **or** parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.
  - a. Twelve (12) workweeks of FMLA job-protected leave is available to eligible employees with a covered military member serving in the National Guard or Reserves.
  - b. Eligible employees may take FMLA leave while the employee's spouse, biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is of any age; or, parent (the "covered military member") is on active duty or call to active duty status. A qualifying exigency leave cannot be used by members of the military themselves.
  - c. A qualifying exigency is any of the following categories for which employees can use FMLA leave (§ 825.126):
    - i Short-notice deployment;

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- i-1 To address any issue arising from when a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven (7) or less calendar days prior to the date of deployment;
- i-2 Leave taken for this purpose can be used for a period of seven (7) calendar days beginning on the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation;
- ii Military events and related activities;
  - ii-1 To attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of a covered military member;
  - ii-2 To attend family support or assistance programs and informational briefing sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
- iii Childcare and school activities;
  - iii-1 To arrange for alternative childcare when the active duty or call to active duty status of a covered military member necessitates a change in the existing childcare arrangement for a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child for whom a covered military member stands 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 at the time that FMLA leave is to commence;
  - iii-2 To provide childcare on an urgent, immediate need basis (but not on a routine, regular, or everyday basis) when the need to provide such care arises from the active duty or call to active duty status of a covered military member for a biological, adopted, or foster child, a stepchild, or a legal ward of a covered military member, or a child

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for whom a covered military member stands 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 at the time that FMLA leave is to commence;

iii-3 To enroll in or transfer to a new school or day care facility for a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands 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 at the time that FMLA leave is to commence, when enrollment or transfer is necessitated by the active duty or call to active duty status of a covered military member; and

iii-4 To attend meetings with staff at a school or a daycare facility, such as meetings with school officials regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a biological, adopted, or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands 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 at the time that FMLA leave is to commence, when such meetings are necessary due to circumstances arising from the active duty or call to active duty status of a covered military member;

iv Financial and legal arrangements;

iv-1 To make or update financial or legal arrangements to address the covered military member's absence while on active duty or call to active duty status, such as preparing and executing financial and healthcare powers of attorney, transferring bank account signature authority, enrolling in the Defense Enrollment Eligibility Reporting System (DEERS), obtaining military identification cards, or preparing or updating a will or living trust; and

iv-2 To act as the covered military member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the covered military member is on active duty or call to active duty status, and for a

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period of 90 days following the termination of the covered military member's active duty status;

v Counseling;

v-1 To attend counseling provided by someone other than a health care provider for oneself, for the covered military member, or for the biological, adopted or foster child, a stepchild, or a legal ward of the covered military member, or a child for whom the covered military member stands 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 at the time that FMLA leave is to commence, provided that the need for counseling arises from the active duty or call to active duty status of a covered military member;

vi Rest and recuperation;

vi-1 To spend time with a covered military member who is on short-term, temporary, rest and recuperation leave during the period of deployment;

vi-2 Eligible employees may take up to five (5) days of leave for each instance of rest and recuperation;

vii Post-deployment activities;

vii-1 To attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of ninety (90) days following the termination of the covered military member's active duty status; and

vii-2 To address issues arising from the death of a covered military member while on active duty status, such as meeting and recovering the body of the covered military member and making funeral arrangements;

viii Additional activities;

viii-1 Activities not encompassed in the other categories, but agreed to by the elected official/agency head/director and employee.

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viii-2 To address other events which arise out of the covered military member's active duty or call to active duty status provided that the appointing authority and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

- d. A "covered military member" means the employee's spouse, son, daughter, or parent on active duty or call to active duty status.
    - i. A "son or daughter on active duty or call to active duty status" means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on active duty or call to active duty status, and who is of any age.
    - ii. "Active duty or call to active duty status" means duty under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation.
  - e. A call to active duty for purposes of leave taken because of a qualifying exigency refers to a Federal call to active duty. State calls to active duty are not covered unless under order of the President of the United States.
  - f. Employees are eligible to take FMLA leave because of a qualifying exigency when the covered military member is on active duty or call to active duty status in support of a contingency operation as either a member of the reserve components (Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve), or a retired member of the Regular Armed Forces or Reserve. An employee whose family member is on active duty or call to active duty status in support of a contingency operation as a member of the Regular Armed Forces is not eligible to take leave because of a qualifying exigency.
2. Leave to care for a covered servicemember with a serious injury or illness (§ 825.127).
- a. Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in

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the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

- b. In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.
  - i A “son or daughter of a covered servicemember” means the covered servicemember’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.
  - ii A “parent of a covered servicemember” means a covered servicemember’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents “in law.”
  - iii The “next of kin of a covered servicemember” is the 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, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember’s next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember’s only next of kin. The employee will be required to provide confirmation of their covered family relationship to the covered servicemember.



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## II. Eligibility (§ 825.110)

A. To be eligible to take an FMLA leave, the employee must meet ***all*** criteria:

1. Employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave. Any portion of a week the employee is on the payroll counts as a full week.
  - a. The 12 months need not be consecutive months;
  - b. A break in service of seven (7) years or more need not be counted in determining whether the employee has been employed for at least 12 months;
  - c. Employment periods preceding a break in service of more than seven (7) years **must be counted** in determining whether the employee has been employed for at least 12 months where the employee's break in service is occasioned by the fulfillment of his or her National Guard or Reserve military service obligation. The time served performing the military service must be also counted in determining whether the employee has been employed for at least 12 months by the appointing authority.
  - d. If an employee is maintained on the payroll for any part of a week, including any periods of paid or unpaid leave (sick, vacation, comp time) during which other benefits or compensation are provided (e.g., workers' compensation, group health plan etc.), the week counts as a week of employment.
  - e. The employee must not have already received 12 weeks of FMLA leave within the 12 month period immediately proceeding the first day of that the FMLA leave is being requested.
2. The determination of whether an employee has worked at least 1,250 hours in the past 12 months and has been employed for a total of at least 12 months must be made as of the date the FMLA leave is to start

B. An employee's rights to FMLA may be denied or delayed only for the following reasons:

1. The employee fails to have met the 1250 hour threshold;

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2. The employee has not been employed by the Medina County Board of Commissioners for at least 12 months;
3. Timely submission of required medical certification is not made by the employee;
4. The employee fails to provide required fitness to return to work certification;
5. The employee expresses an intention not to return to work;
6. The employee fraudulently requests or obtains FMLA;
7. The employee is employed elsewhere while on FMLA leave.

### III. Leave Periods

#### A. Non-Military FML Leave (§ 825.200)

1. Eligible employees are entitled to take up to twelve (12) workweeks of leave during a twelve (12) month period, defined as a “rolling calendar year”. A rolling calendar year commences on the date when the FMLA leave begins and runs consecutively for the next 52 weeks.
  - a. Spousal Exceptions. If a husband and wife both work for the county under the same appointing authority and are eligible for FMLA leave, they are entitled to a combined twelve (12) work weeks of leave taken for birth, adoption, foster care. The twelve (12) weeks will be calculated in the same manner as leave for an individual employee.
  - b. Unused portions of the twelve (12) week FMLA leave may not be carried over between rolling calendar years.

#### B. Qualifying Exigency Leave, (§ 825.126)

1. Eligible employees are entitled up to twelve (12) weeks of leave because of “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 to active duty status, in support of a contingency operation.

#### C. Military Caregiver Leave, (§ 825.127)

1. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury

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sustained in the line of duty on active duty is entitled to up to twenty-six (26) weeks of leave in a single twelve (12) month period to care for the service member. Military caregiver leave entitlement is to be applied on a per-covered-servicemember, per-injury basis.

2. Military caregiver leave is available during “a single twelve (12) month period” during which an eligible employee is entitled to a combined total of twenty-six (26) weeks.
3. Eligible employees may **not** take leave to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.
4. If the eligible employee does not take all twenty-six (26) workweeks, the remaining part of the 26 workweeks is forfeited.

#### **IV. Use of Paid Time Accruals During an FMLA Leave**

- A. Employees shall be required take all paid time accruals for which their employment status so qualifies them, i.e. sick and/or vacation hours, compensatory time (§ 825.207(f)), and/or personal day, as of the first day their leave begins. All paid time off shall run concurrently with an employee’s eligible FMLA entitlement. This also applies to an FMLA leave that is taken either intermittently or through a reduced work schedule.
- B. **In no event may an employee take any portion of their FMLA leave as unpaid until all available accrued paid time has been exhausted.**
- C. Full time employees shall have holidays credited against their eligible FMLA entitlement.

#### **V. Appointing Authority’s Responsibility for Approving Leave**

- A. When an employee requests FMLA leave, or when the appointing authority acquires knowledge the leave may be for an FMLA-qualifying reason, the appointing authority must notify the employee of their eligibility within five (5) business days, absent extenuating circumstances.
  1. The appointing authority must provide the *Notice of Eligibility and Rights & Responsibilities*, **WH-381**, (available through Human Resources or on HR’s web site) detailing the employee’s specific expectations and obligations and explaining

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any consequences of failure to meet these obligations. If leave has already begun, the notice should be mailed to the address of record.

2. The appointing authority must designate whether the employee is eligible for FMLA leave or, if not, indicate at least one reason why the employee is not eligible including, as applicable, the number of months the employee has been employed, the number of hours of service worked during the month period preceding the date the FMLA leave would commence. Notice must be provided at the commencement of leave for each qualifying reason in the applicable twelve (12) month period.
3. If the employee provides notice of a subsequent need for FMLA leave during the applicable twelve (12) month period due to a different FMLA-qualifying reason, and the employee's eligibility status has not changed, no additional eligibility notice is required. If, however, the employee's eligibility status has changed (e.g., if the employee has worked less than 1,250 hours of in the 12 months preceding the commencement of leave for the subsequent qualifying reason), the appointing authority must notify the employee of the change in eligibility status within five (5) business days, absent extenuating circumstances.

B. Designation notice.

1. The appointing authority is responsible for designating leave as FMLA-qualifying, and for giving notice of the designation to the employee within five (5) business days, absent extenuating circumstances. If it is determined the leave will not be designated as FMLA-qualifying the appointing authority must notify the employee of that determination.
2. Form [WH-382](#), *Designation Notice*, (available in HR or on HR's web site) will be used for the employee's designation notice.

C. Incomplete or Insufficient Certification

1. The appointing authority shall advise an employee whenever finding a certification incomplete or insufficient and state in writing what additional information is necessary to make the certification complete and sufficient.
  - a. A certification is considered incomplete if one or more of the applicable entries have not been completed. A certification is considered insufficient if the information is vague, ambiguous, or non-responsive.

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- b. The appointing authority must advise the employee within seven (7) calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the appointing authority are not cured in the resubmitted certification, the appointing authority may deny the FMLA leave.
- c. Where the employee fails to alleviate any deficiencies in their certification for a leave taken because of an their own serious health condition or the serious health condition of a family member, Human Resources may contact the health care provider for purposes of clarification and authentication of the medical certification (whether initial certification or recertification). **Under no circumstances** may the employee's direct supervisor contact the employee's health care provider.
  - i. Human Resources shall provide the health care provider with a copy of the certification and request verification the information contained on the certification form was completed and/or authorized by the health care provider who signed the document; no additional medical information may be requested.
  - ii. Human Resources may also contact the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response. Human Resources may not ask health care providers for additional information beyond that required by the certification form.
  - iii. The employee must first provide authorization for the release of information by their health care provider for purposes of clarification and/or authentication of their medical certification. If the an employee chooses not to provide Human Resources with authorization allowing the Human Resources to clarify the certification with the health care provider, and does not otherwise clarify the certification, the appointing authority may deny the taking of FMLA leave if the certification is unclear.
- D. The appointing authority will require the employee to provide a new medical certification in each subsequent leave year where the employee's need for leave lasts beyond a single leave year (intermittent, reduced schedule leave) due to their own serious health condition or the serious health condition of the employee's covered family member.

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- E. The appointing authority may request recertification no more often than every 30 days and only in connection with an absence by the employee, unless:
1. When the medical certification indicates the minimum duration of the condition is more than 30 days, the appointing authority must wait until that minimum duration expires before requesting a recertification;
  2. The medical certification indicates less than 30 days, the appointing authority may request recertification if:
    - a. The employee requests an extension of leave;
    - b. Circumstances described by the previous certification have changed significantly.
  3. In all cases, the appointing authority may request recertification of a medical condition every six months in connection with an absence by the employee.

## **VI. Employee Responsibility**

For the expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member.

### **A. Foreseeable FMLA Leave (§ 825.302)**

1. The employee must provide at least 30 days advance notice based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or of a family member, or the planned medical treatment for a serious injury or illness of a covered servicemember before FMLA leave is to begin. In those cases where the employee is required to provide at least 30 days notice of foreseeable leave and does not do so, the employee shall explain the reasons why such notice was not practicable.
2. The employee must state a qualifying reason for the needed leave, the anticipated timing and duration of the leave to allow their appointing authority to determine whether the leave qualifies. The employee has an obligation to respond to questions designed to determine whether an absence is potentially FMLA-qualifying. Failure to respond to reasonable inquiries regarding the leave request may result in denial of FMLA protection if the appointing authority is unable to determine whether the leave is FMLA.

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3. A foreseeable intermittent leave or leave on a reduced leave schedule must be medically necessary due to a serious health condition or a serious injury or illness.
  - a. Employees are expected to consult with their supervisor prior to the scheduling of treatment in order to work out a treatment schedule which best suits the needs of both their agency/department and the employee. The employee must make a reasonable effort not to disrupt the functions of their department.
  - b. In such instances where the employee calls of “sick” due to a FMLA-qualifying reason, i.e. intermittent or reduced schedule FMLA leave, for which the appointing authority previously provided FMLA-protected leave, the employee must specifically reference the qualifying reason for calling off work. An employee has an obligation to respond to questions designed to determine whether the absence is potentially FMLA-qualifying.

B. Unforeseeable FMLA Leave (§ 825.303)

1. When the approximate timing of the need for leave is not foreseeable, an employee must provide notice as soon as practicable under the particular circumstances.
2. Notice may be given by the employee’s spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to do so personally.

C. Medical Certification

1. The employee is required to provide certification issued either by their health care provider due to the employee’s own serious health condition or to care for the employee’s covered family member with a serious health condition.
2. The appointing authority will request the employee furnish certification at the time the employee gives notice of the need for leave or within five (5) business days thereafter, or, in the case of unforeseen leave, within five (5) business days after the leave commences (§ § 825.309, 825.310).
  - a. [Form WH-380-E](#), *Certification of Health Care Provider for the Employee’s Serious Health Condition* is available in Human Resources or on their web site: [www.hr.medinaco.org](http://www.hr.medinaco.org).

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b. Form WH-380-F, *Certification of Health Care Provider for the Family Member's Serious Health Condition*, is available in Human Resources or on their web site: [www.hr.medinaco.org](http://www.hr.medinaco.org).

3. The employee must provide certification to their appointing authority within fifteen (15) calendar days after the appointing authority's request, unless it is not practicable under the particular circumstances to do so.
4. The appointing authority may require the employee to get a second opinion from an independent medical provider. The appointing authority will select and pay for the second opinion. If the two opinions conflict, the conflict may be resolved by a third opinion by a provider agreed to by the appointing authority and the employee, which shall be considered final and binding. The appointing authority shall pay for this opinion. Employees who do not cooperate throughout this process may have their request for an FMLA leave denied.

D. Qualifying Exigency (§ 825.309)

1. Form WH-384, *Certification of Qualifying Exigency for Military Family Leave*, is available in Human Resources or on their web site: [www.hr.medinaco.org](http://www.hr.medinaco.org).
  - a. The employee will be required to provide a copy of their active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service. This information need only be provided once.
  - b. A copy of new active duty orders or other documentation issued by the military shall be provided if the need for leave is because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member.
2. If an employee submits a complete and sufficient certification to support their request for leave because of a qualifying exigency, the appointing authority may not request additional information from the employee.



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3. If the qualifying exigency involves meeting with a third party, the appointing authority may contact the individual or entity with whom the employee is meeting for purposes of verifying a meeting or appointment schedule and the nature of the meeting between the employee and the specified individual or entity. The employee's permission is not required in order to verify meetings or appointments with third parties, but no additional information may be requested by the appointing authority.
  4. An appointing authority also may contact an appropriate unit of the Department of Defense to request verification that a covered military member is on active duty or call to active duty status; no additional information may be requested and the employee's permission is not required.
  5. Recertification does not apply to leave taken for a qualifying exigency.
- E. To Care for a Covered Servicemember with a Serious Injury or Illness (§ 825.310)
1. Form WH-385, Certification for Serious Injury of Illness Covered Servicemember for Military Family Leave, is available in Human Resources or on their web site: [www.hr.medinaco.org](http://www.hr.medinaco.org).
    - a. The employee will be required to obtain a certification completed by an authorized health care provider of the covered servicemember.
    - b. In lieu of form WH-385, the appointing authority must accept as sufficient certification an "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA regardless of whether the employee is named in the order or authorization.
      - i. During that time period, an eligible employee may take leave to care for the covered servicemember in a continuous block of time or on an intermittent basis.
      - ii. An eligible employee who provides an ITO or ITA to support his or her request for leave may not be required to provide any additional or separate certification that the leave is medically necessary.
  2. Recertification does not apply to leave taken to care for a covered servicemember with a serious injury or illness.

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3. An appointing authority may seek authentication and clarification of the ITO or ITA; however, the appointing authority may not seek a second or third opinion or recertification process during the period of time in which leave is supported by an ITO or ITA.

## **VII. Human Resources Responsibilities**

1. The appointing authority/director shall forward the completed certification to Human Resources to verify eligibility.
  - a. Finding the employee eligible, Human Resources shall prepare a resolution for the Board's approval of the employee's FMLA. Human Resources shall also complete a Personnel Action form designating the employee for FMLA leave.
  - b. Finding the employee ineligible, Human Resources shall notify the department director who, in turn, shall notify the employee that their leave does not qualify under the FMLA and an alternative leave, if applicable, must be considered.
2. An FMLA leave is **not** officially approved until passed by resolution and the Personnel Action form signed by the Medina County Board of Commissioners.
3. Human Resources shall notify the employee's department the FMLA has been approved and such absences will count against the employee's FMLA entitlement, or that such leave is pending receipt of further documentation. Human Resources, having reason to know that the FMLA request will appear on or before the Board action shall provide either written or oral notice to the department of the leave's approval as soon as it is practicable.
4. An employee fraudulently obtaining FMLA is subject to disciplinary action, up to and including termination.

## **VIII. Effect on Benefits: Health, Sick Time, Vacation, Holidays**

### **A. Health Insurance**

1. **Paid Leave:** premium deductions will continue being taken from the employee's pay check.
2. **Unpaid Leave:** The employee will be responsible for paying their portion of the health plan premium. The employee must arrange with the Auditor's office

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3. (330.722.9772) for continued payment of the amount normally deducted from their bi-weekly pay check.
  - a. Payments are due by the last day of the month prior to the month of coverage, i.e., April's payment is due by March 31<sup>st</sup>. Coverage will be terminated due to non-payment of premium. Checks should be made payable to the Medina County Auditor and submitted directly to the Auditor's office.
  - b. If the employee's premium is more than 30 days late, all obligations of the County to continue coverage cease. Under these circumstances, the County has the right to recoup any payments it has made.
    - i. If, under these circumstances, the employee's health insurance coverage is canceled the employee will be reinstated to full health coverage upon their restoration to duty at the same level that was provided prior to the leave. An employee may not be required to meet any qualification requirements imposed by the health plan, including any new preexisting-condition waiting period, to wait for open enrollment or to pass a medical examination to obtain reinstatement of coverage.
    - ii. All claims paid on a retroactively terminated policy will become the responsibility of the employee.
    - iii. If an employee fails to return to work after a period of unpaid FMLA leave, and the County has maintained health coverage, the County is entitled to recover the premiums paid unless the reason the employee does not return to work is due to (1) continuation of a serious health condition that would entitle the employee to FMLA leave, or (2) other circumstances beyond the control of the employee.
    - iv. An employee is considered to have returned to work after he or she has worked for a period of 30 calendar days. Therefore, an employee who returns to work only one week and then departs is not considered to have returned to work for the purposes of premium payments. The County may recover health insurance premium payments from any sum due to the non-returning employee such as travel reimbursement or paychecks, provided that prior to deducting any amounts, the County consults with the office of the Medina County Prosecutor to ensure that such deduction is appropriate.

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**B. Sick Hours**

1. Full time employees do **not** accrue sick leave during non-paid FMLA.
2. Part time employees do **not** accrue sick leave during non-paid FMLA.

C. **Vacation:** full time employees will **not** accrue vacation during a non-paid FMLA.

D. **Holidays:** Full time employees on non-paid FMLA leave during which a County recognized holiday falls shall be paid for that holiday.

**IX. Transfer To Alternative Position**

A. In all cases of intermittent and reduced scheduled leave, the appointing authority/director reserves the right to require the employee to transfer to another position that better accommodates the employee's need for leave and/or the County's operations. This decision is at the sole discretion of the appointing authority.

B. The appointing authority also reserves the right to transfer an employee to another position whenever an employee's use of leave for one or more qualifying reasons is so frequent and intermittent that it is impossible predict and schedule for coverage.

**X. Reinstatement**

A. An employee taking FMLA leave under this policy will be returned to the employee's same position or to an equivalent position (at the election of the appointing authority) unless the employee would have been terminated in the absence of FMLA leave due to layoff, job abolishment, or insufficient funds.

B. The taking of FMLA leave will not result in any loss of benefits or conditions of employment accrued prior to the beginning of the leave period.

C. The employee must provide a release from their physician allowing their return at least one week prior to their anticipated date of return. This release is to be given to the employee's director or supervisor prior to reinstatement.

1. The department director or supervisor will immediately forward this release to Human Resources who shall in turn prepare the personnel action form and resolution for Board approval returning the employee to work.

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2. The employee may not return to work without a physician's release. However, given the department's receipt of said release, the employee may be returned to work prior to approval by Board resolution.

## **XI. Definitions**

- A. "Child" is a biological, adopted, foster, legal ward, child of a person standing in the place of a parent, or a step-son or -daughter who is under 18 years old; or who is over 18 years old and incapable of self-care because of a mental and/or physical disability
- B. "Family Member". A family member is defined as: spouse, son, daughter, parent, or other person who stands in place of a parent (in loco parentis).
- C. "Health Care Provider". A health care provider is any doctor of medicine or osteopathy, podiatrist, dentists, clinical psychologists, clinical social workers, optometrists, nurse practitioner or nurse midwife performing within the scope of their practice as defined under state law. Christian Science practitioners and chiropractors are health providers to the extent defined under regulations issued by the U.S. Department of Labor.
- D. "Intermittent" leave is taken in separate blocks of time rather than one continuous period.
- E. "Parent" is the biological, legal adoptive or step-parent of an employee or an individual who has day-to-day responsibilities to care for and financially support the employee when he/she was a child. The term does not include parents-in-law.
- F. "Period of Incapacity" is an inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.
- G. "Reduced schedule leave" is fewer workdays per week or hours per workday than an employee's normal work schedule. For employees who work part-time or variable hours, the leave is determined on a pro-rata basis.
- H. "A Regimen of Continuing Treatment" includes, for example, a course of prescription medications (e.g., an antibiotic or therapy requiring special equipment to resolve or alleviate the health condition). A regimen of treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest,

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drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider.

- I. "Serious Health Condition". A serious health condition is defined as any illness, injury, impairment, or physical or mental condition that involves:
  1. Inpatient care (overnight stay) any period of incapacity or subsequent treatment; or,
  2. Continuing treatment by a health care provider involving any of the following:
    - a. A period of incapacity of more than 3 consecutive calendar days that involves treatment two or more times by a health care provider or one treatment by a health care provider which results in a regimen of continuing treatment.
    - b. Any period of incapacity due to pregnancy or for prenatal care, e.g. morning sickness
    - c. Any period of incapacity due to a chronic serious health condition. A condition which requires periodic visits for treatment which continues over an extended period of time and may cause episodic periods of incapacity, e.g., asthma, diabetes, epilepsy.
    - d. A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective.
    - e. Any period of incapacity to receive multiple treatments 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 days if not treated.
  3. A serious health condition does not include cosmetic treatment, the common cold, flu, earaches, upset stomach, minor ulcers, and headaches other than migraines, unless inpatient care is required or complications arise.
  4. Absences due to an employee's use of alcohol or drugs are not covered, but absences for treatment of substance abuse are covered.
- J. "Spouse" is a husband or wife as defined by ORC **3105.12**

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- K. "Treatment" includes 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.