

02.07.01 Family Medical Leave Requests

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Appendices:	02.07.01 Flowchart
Forms:	02.07.01(a) Milwaukee County FMLA Payroll Supplement Form
Statutory References:	29 U.S.C., Ch. 28, et seq., as amended; Wis. Stat. § 103.10
Ordinance References:	None
Department Responsible for Updates:	Human Resources
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1. OBJECTIVE:

To document Milwaukee County’s procedure regarding the federal Family Medical Leave Act and the Wisconsin Family Medical Leave Act.

2. DEFINITIONS:

- A. Continuous Leave. An ongoing consecutive leave with a beginning and an end date.
- B. Federal FMLA Eligibility. An employee is eligible for Federal FMLA when they have worked for Milwaukee County for at least 12 months and 1,250 hours.
- C. FMLA. Family Medical Leave Act. Milwaukee County is governed by WI FMLA and Federal FMLA.
- D. FMLA Administrator. A Milwaukee County Human Resources employee who oversees program management for the third-party vendor and serves as the internal contact for all FMLA related inquiries.
- E. FMLASource. Milwaukee County’s third-party vendor for FMLA administration.
- F. Human Resources Business Partner (HRBP). Responsible for performing Human Resources related duties on a professional level and partnering with departmental management to support designated County organizations.
- G. Intermittent Leave. Medical leave taken on an as needed basis for treatment or episodes of incapacity as approved by the medical provider.
- H. Payroll. Administrative office responsible for generating paid time to employees.
- I. Wisconsin FMLA Eligibility. An employee is eligible for WI FMLA when they have worked for Milwaukee County for at least 12 months and 1,000 hours.

3. PROCEDURE:

The Family Medical Leave Act provides up to 12 weeks of unpaid, job protected leave to eligible employees for certain family and medical reasons. In compliance with these laws, Milwaukee County will provide Family Medical Leave to eligible employees.

Current employees can contact Human Resources or refer to the County website if they need more information about their rights and eligibility for leave under federal and/or state laws.

A. Applying for FMLA

- i. To be eligible to apply for leave the employee must be employed at least 12 months or have had previous service (within 7 years) with the County for at least 12 months; also, for Wisconsin FMLA eligibility, 1,000 hours of employment are required and 1,250 hours for Federal FMLA eligibility. Employees who have been employed less than 12 months may talk to their HR Business Partner about requesting a leave of absence without pay.
- ii. The employee must apply for their leave by contacting FMLASource via phone (877-GO2-FMLA) or [online](#) and notify their supervisor per their work rules. FMLASource must notify the employee of their eligibility to take FMLA within five business days.
- iii. After applying, the employee will receive application materials by mail or via email. The materials will include instructions and medical certification forms to be completed by the health care provider in order to process the requested leave. The employee will be notified of the status of their FMLA claim once it has been processed.
- iv. If leave is denied the employee, payroll, and supervisor will be notified by FMLASource. The employee has the following options:
 - a. They may talk to their HR Business Partner about requesting a leave of absence without pay.
 - b. They may appeal the denial to FMLASource within 10 days.
 - c. They may appeal the denial to Milwaukee County within 30 days.
- v. If the employees believes FMLA was unfairly denied, then these two steps may be taken:
 - a. They may file an Equal Rights Division complaint within 30 days.
 - b. They may bring civil action to the Department of Labor within two years of applying.
- vi. Approved leave may be granted as continuous and/or intermittent leave.

B. Continuous Leave

- i. FMLASource notifies the employee, payroll, and supervisor that leave is approved.
- ii. The employee completes the Milwaukee County FMLA Payroll Supplement form to indicate how they want their available paid time substituted for their FMLA leave, if applicable.
- iii. The employee is responsible for communicating the status of their FMLA and start and end dates with their manager.
- iv. Once the leave is complete, the employee will:
 - a. Conform to all return to work requirements and return to work, or;
 - b. Present restrictions prior to returning:
 - i. The supervisor can accommodate temporary restrictions and the employee returns to work.
 - ii. The supervisor can't accommodate restrictions.
 1. The employee remains on leave until restrictions can be accommodated or they heal, or;
 2. If the employee is not able to return to work and they have not exhausted all available leave time, the employee can request additional FMLA leave, or;
 3. If the employee is not able to return to work and they have exhausted all available FMLA time, the employee's department may consider an

additional medical leave of absence for the employee, if this additional leave time will permit the employee to return to work.

C. Intermittent Leave

- i. FMLASource notifies the employee, payroll, and supervisor that leave is approved.
- ii. The employee completes the Milwaukee County FMLA Payroll Supplement form to indicate how they want their available paid time substituted for their FMLA leave, if applicable.
- iii. The employee communicates with their supervisor the status of their FMLA. The employee must make reasonable effort to schedule treatments so that they do not adversely affect County operations. They must follow their departmental call in procedure for each absence and contact FMLASource within 48 hours to track each absence.
- iv. Once the leave is complete, the employee will:
 - a. Conform to all return to work requirements and return to work, or;
 - b. Present restrictions prior to returning:
 - i. The supervisor can accommodate temporary restrictions and the employee returns to work.
 - ii. The supervisor can't accommodate restrictions.
 1. The employee remains on leave until restrictions can be accommodated or they heal, or;
 2. If the employee is not able to return to work and they have not exhausted all available leave time, the employee can request additional FMLA leave, or;
 3. If the employee is not able to return to work and they have exhausted all available FMLA time, the employee's department may consider an additional medical leave of absence for the employee, if this additional leave time will permit the employee to return to work.

4. **POLICY:**

Milwaukee County Policy – Federal and State FMLA Laws

Revised December 1, 2015:

- The Wisconsin Family and Medical Leave Act went into effect April 26, 1988. See Wis. Stat. § 103.10.
- The Federal Family and Medical Leave Act went into effect August 5, 1993. See 29 U.S.C. Ch. 28 et seq., as amended.
- The purpose of this policy is to comply with the federal and state FMLA laws.

A. HOW TO DETERMINE IF AN EMPLOYEE IS ELIGIBLE FOR FMLA:

- i. **Federal:** An employee must have worked 1,250 hours over previous 12 months from date leave begins (including overtime worked, but not paid or unpaid leave time). An employee need not re-qualify each time more intermittent leave is needed in the same calendar year (January-December). An employee must have been employed by the County for 12 months prior to date leave begins (need not be consecutive). Separate periods of employment will be counted, provided that a break in service does not exceed seven (7) years. Separate periods of employment will be counted if the break in service exceeds seven (7) years due to

National Guard or reserve military service obligations or when there is a written agreement including a collective bargaining agreement stating the employer's intention to rehire the employee after the service break.

- ii. **State:** An employee must have been paid for 1,000 hours (including overtime worked, and paid leave time) within 52 weeks prior to request. An employee must be employed for 52 consecutive weeks, including layoff (need not be immediately prior to date of request).

B. WHAT AMOUNT OF FMLA TIME OFF IS AN EMPLOYEE ENTITLED TO:

- i. **Federal:** (January – December calendar year, one exception*)
 - a. Up to 12 weeks
 - i. Within 12 months of birth or placement of a child for adoption or foster care and to care for the newborn, adopted, or foster child. (*No more than one 12-week period per child).
 - ii. Within a calendar year for an employee who is unable to work because of a serious health condition or for a covered family member who has a serious health condition ("SHC").
 - iii. Within a calendar year of Qualifying Exigency Military Family Leave. This provision is available to eligible employees who need to take leave due to "any qualifying exigency" that arises because the employee has an eligible family member who is called to active duty or is on active duty status in support of a military contingency operation.
 - b. Total of 26 weeks of Military Caregiver Leave (also known as the Covered Service Member Leave) within a single 12-month period beginning on the first day of FMLA leave. This provision is available to an employee who is the spouse, child, parent, or next of kin (near blood relative excluding, spouse, child, parent) of a covered service member to care for the service member's serious injury or illness.
- ii. **State:** (January – December calendar year)
 - a. Up to ten (10) weeks
 - i. Up to six (6) weeks of leave per calendar year for birth or adoption (not foster care) beginning within 16 weeks of birth or placement of child for adoption or precondition to adoption.
 - ii. Up to two (2) weeks of leave per calendar year for an employee who is unable to work because of the employee's own serious health condition (SHC).
 - iii. Up to two (2) weeks of leave per calendar year to care for the employee's child, spouse, parent, or parent-in-law who has a SHC.
 - iv. Marital status is irrelevant when there is a birth or adoption.
- iii. Application of Maximum Allowable Leave under State and Federal FMLA:
 - a. Under the federal FMLA, an employee may take all 12 weeks for one purpose in one calendar year (January through December).
 - b. Under the state FMLA, an employee may not take all 10 weeks for one purpose in one calendar year (January through December).

- c. Under the federal FMLA, if spouses are employees of the County, the combined total amount of leave they may take is limited to a total of 12 weeks for birth, adoption, foster care, or to care for sick parents.
 - iv. Birth, Adoption, or Placement of a Child:
 - a. Employees are entitled to take federal FMLA leave for birth or adoption or placement of a child for foster care within one year after the birth, adoption, or foster care placement. (*No more than one twelve (12) week period per child.)
 - b. Under state FMLA, leave to care for a newborn child or for a newly placed child for purposes of adoption must commence within 16 weeks before or after the birth or placement of a child for purposes of adoption. If two births or two adoptions occur in the same calendar year, under state FMLA law, the employee is entitled to 12 weeks of leave (6+6).
 - c. Under the federal and state FMLA, leave may be taken prior to the birth of a child or placement of a child for adoption or foster care (federal law only) if the employee's absence from work is required for the placement to proceed.
 - d. Under both federal and state law, there is no medical certification needed for a FMLA leave to care for a newborn or newly placed child (federal: adoption, foster) (state: adoption only).
 - v. Concurrent Utilization: Twelve weeks of FMLA leave under federal law runs concurrently with FMLA leave under state law and any other applicable leaves under County civil service rules, County ordinances, and union contracts. (See MCO §§ 17.18, generally, and (4). Injury pay, workers' compensation wage benefits, and short term disability payments is counted against the employee's FMLA federal and state leave entitlement if the employee is qualified for FMLA leave.)

C. INTERMITTENT LEAVE (NON-CONTINUOUS INCREMENTS):

FMLA leave taken in separate blocks of time or on a reduced schedule basis due to a single qualifying reason. Efforts should be made by employees to not unduly disrupt the County's operations. Intermittent leave is scheduled. Using FMLA to preclude working mandatory overtime hours will cause those hours to be deducted from the employees FMLA allotment.

i. **Federal:**

- a. Allowed if medically necessary
 - i. For planned medical treatment, the employee taking FMLA leave must make a reasonable effort to schedule treatment so as to not unduly disrupt the operations of the County. Advance notice and schedule of leave dates and times are required, schedule should be sufficiently definite. Examples: medical appointments, chemotherapy, full-time to part-time during period of recovery need medical certification indicating the necessity of intermittent leave or reduced leave schedule due to serious health condition.
- b. If the County agrees, the employee may have intermittent or reduced leave for birth, adoption, or foster care placement.
- c. An employee does not have to establish eligibility with each leave/absence in the same calendar year.

- ii. **State:**
 - a. Allowed if medically necessary including reduced hours - should not unduly disrupt the County's operations.
 - b. Partial absence leave due to birth or adoption allowed (should not unduly disrupt the County's operations)

A request for intermittent leave or a reduced work schedule due to a SHC does not require the County's agreement. Included are those times scheduled for planned medical treatment and recovery from treatment for a SHC. This includes part time or reduced work schedules. The shortest increment allowed in other situations must be allowed for time off under the FMLA.

Employees requesting intermittent (non-continuous increments) Federal FMLA that is foreseeable based on planned medical treatment for purposes of providing care to a child, spouse or parent with a serious health condition or for the employee's own serious health condition may be required to transfer temporarily to an available alternate position for which the employee is qualified and which better accommodates recurring periods of leave than the regular employment position of the employee. An employee temporarily transferred will receive the same pay and benefits but may be assigned different duties.

Medical certification indicating the necessity of intermittent leave or reduced work schedule leave due to a SHC is needed. Intermittent/reduced schedule leave may be taken when medically necessary to care for a seriously ill family member or because of the employee's SHC.

D. WHO ARE COVERED FAMILY MEMBERS:

- i. **Federal:**
 - a. Parent: biological, adoptive, in loco parentis to employee (need no legal or biological relationship), (no in-laws).
 - b. Child: Biological, adopted, foster, step, legal ward, child of a person standing in loco parentis under 18 or over 18 and "incapable of self-care" because of a mental or physical disability.
 - i. Incapable of self-care: requires active assistance or supervision to provide daily self-care, unable to perform three or more activities of daily living: bathing, dressing, cooking, eating, shopping, paying bills, using phones, taking public transportation.
 - ii. Mental or physical disability: physical or mental impairment that substantially limits one or more of an individual's major life activities (walking, speaking, breathing, seeing, hearing, caring for oneself, working, etc.).
 - c. Spouse: legal husband or wife, common law spouse if recognized.
- ii. **State:**
 - a. Parent: natural, foster, adoptive, step, legal guardian (includes in-laws) (no in loco parentis).
 - b. Child: natural, adopted, foster, step, legal ward under 18, or, over 18 and is unable to care for him/herself because of a SHC.

- c. Spouse: legal husband or wife, common law spouse if recognized.

E. DEFINITIONS

- i. **Health care provider ("HCP") under Wisconsin FMLA** includes: nurse, chiropractor, physical therapist, certified occupational therapist, dentist, physician, physician's assistant, podiatrist, occupational therapist, occupational therapy assistant, respiratory care practitioner, dietitian, optometrist, pharmacist, acupuncturist, psychologist, social worker, marriage and family therapist or professional counselor, speech-language pathologist, audiologist, massage therapist, bodyworker, and Christian Science Practitioner.
- ii. **Health care provider ("HCP") under federal FMLA** includes: podiatrist, nurse practitioner, midwives, Christian Science Practitioner, optometrist, psychologist, physician's assistant, physical therapist, physician, clinical psychologist, chiropractor, clinical social worker.
- iii. **A SHC under Wisconsin FMLA** is defined as a disabling physical or mental illness, injury, impairment or condition involving either (1) in-patient care in a hospital, nursing home, or hospice or (2) outpatient care that requires continuing treatment or supervision by a health care provider (visits to a health care provider which must be direct, continuous and firsthand). "Disabling" is defined as incapacitation or inability to pursue an occupation due to physical or mental impairment if employed; if individual is not employed, a SHC is a physical or mental impairment that interferes with normal daily functions.
- iv. **A SHC under the federal FMLA, is**
 - a. an illness, injury, impairment, or physical or mental condition that involves one or more of the following:
 - i. Inpatient care in a hospital plus any period of incapacity or subsequent treatment in connection with inpatient care;
 - ii. Continuing treatment by a HCP which includes a period of incapacity of more than three consecutive, full calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves: treatment two or more times within 30 days of the first day of incapacity by a HCP, nurse, physical therapist, or other HCP referred to by the HCP, by a nurse under direct supervision of a HCP, or by a provider of health care services under orders of, or on referral by a HCP; or treatment by a HCP on at least one occasion which results in a regimen of continuing treatment under the supervision of a HCP. The employee is required to visit a HCP at least twice within 30 days of the first day of incapacity unless there are extenuating circumstances. The first (or only) visit to the HCP must occur within 7 days of the first day of incapacity;
 - iii. Periods of incapacity due to pregnancy (must be unable to perform essential functions), need not be more than three consecutive calendar days;
 - iv. A chronic condition requires periodic visits (at least twice a year) to a HCP for treatment by a HCP or by a nurse under direct supervision of a HCP. A chronic condition 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);

- v. There may be permanent or long-term conditions for which treatment may not be effective. The employee or family member must be under continuing supervision but need not be receiving active treatment by a HCP (e.g., Alzheimer's, severe stroke, or the terminal stages of a disease);
 - vi. Conditions that would likely result in a period of incapacity of more than three 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);
 - vii. An employee who is pregnant may be unable to report to work because of severe morning sickness. The husband is entitled to FMLA leave if needed to care for his pregnant spouse who is incapacitated or if needed to care for her during her prenatal care, or if needed to care for the spouse following the birth of a child if the spouse has a SHC;
 - viii. An employee who has asthma attacks may be advised to stay home when the pollen count exceeds a certain level.
- v. **A SHC under the federal FMLA, is not**
- a. Seeing an HCP once with no continuing treatment. Generally, a common cold or the flu is not a serious health condition. However, if the definition of a serious health condition is met, both a cold and the flu may be a SHC.
- vi. **Military Qualifying Exigency Family Leave under the federal FMLA:** 1) short notice deployment (seven (7) days or less); 2) attend military events or ceremonies and activities related to active duty or called to active duty; 3) childcare and school activities; 4) financial and legal arrangements; 5) counseling; 6) spend time with a military member who is on temporary rest and recuperation leave; 7) post-deployment activities; 8) additional activities not encompassed in other categories but agreed to by the employer and employee.
- vii. **Other Important Notes**
- a. Family leave is allowed for caring for both the physical and psychological care and arrangement of third-party care (nursing home, home care nurse). The employee's presence must be beneficial to the family member who has a SHC (including holding the patient's hand). The family member must be unable to carry on his/her daily life's activities (working, school, etc.) Notice and a certification to the County that substantiates that the leave is due to the SHC of the employee's covered family member or a serious injury or illness of a covered service member or because of a qualifying exigency is required. Failure to comply with these requirements may result in a delay in the start of FMLA leave.
 - b. Medical leave is allowed if the employee is unable to perform the essential functions of his/her position. An employee cannot be forced to work in a light duty

position when the employee's health care provider has not released the employee to return to work. An employee on FMLA leave may be able to work a second job even though an employee is eligible for FMLA for his/her County job.

F. SUBSTITUTION OF PAID LEAVE

i. **Federal:**

- a. Unpaid: The County is not required to provide paid sick leave where it is not normally provided.
- b. Substitution of Leave: Federal law permits, and County requires, that an employee substitute available accrued paid leave (such as vacation, personal or sick leave) for unpaid FMLA. Under the federal FMLA, an employee cannot substitute paid sick leave for new child or qualifying exigency but can substitute paid sick leave for the employee's own serious health condition, to care for a family member with a serious health condition and military caregiver leave when the County's sick leave plan otherwise covers the absence. The County may not force an employee to take other paid leave if an employee or a covered family member has a serious health condition and the employee has sick leave available and the employee wants to take sick leave in accordance with civil service rules/county ordinances.
- c. Employees may not use sick time or other paid leave for absences compensated under a short term disability policy or covered under workers' compensation benefits.

ii. **State:**

- a. Unpaid: The employee has the sole right to substitute any kind of paid leave, including sick leave.
- b. Substitution: The employee has the sole right to substitute any available form of paid leave.

G. WHAT AN EMPLOYEE IS REQUIRED TO DO:

i. **Advance notice**

- a. **Federal:** When the need for a FMLA leave is foreseeable (birth, planned medical treatment, etc.), an employee must provide 30 days' notice before a FMLA leave is to begin. If 30-day notice is not practicable, notice must be given as soon as possible and practical - the same business day or the following business day that the need for leave became known. Any period of delay may result in the denial of FMLA. When the need for FMLA leave is not foreseeable the employee must comply with Milwaukee County's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.
- b. **State:** Reasonable and practicable notice is required. Notice is not required for emergencies.

An employee shall provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request. **Calling in "sick" without providing more information will not be considered sufficient notice to trigger an employer's obligation under FMLA.** The County or its designee requires information from an employee that indicates the SHC

renders the employee unable to perform the functions of his/her job or a covered family member with a serious health condition is unable to perform his/her daily activities, or that the leave is related to a pregnancy, or the employee was hospitalized overnight. **The County or its designee is obligated to inquire if it needs additional information to determine whether the leave qualifies for FMLA protection.**

The employee eligible for FMLA must provide the County with advance notice and submit a medical certification to substantiate that a requested leave is medically necessary due to the employee's SHC that renders the employee unable to perform the essential functions of his/her job. FAILURE TO COMPLY WITH THESE REQUIREMENTS MAY RESULT IN A DELAY IN THE START OF FMLA LEAVE.

i. Medical Certification

- a. The employee should furnish a medical certification to the County's FMLA administrator at the time the employee requests FMLA leave or within five business days from the date of the request. If the FMLA leave was unforeseen, the County's FMLA administrator should receive the medical certification within five business days after the leave commences. The employee must provide the requested certification no later than 15 calendar days after requested by the County's FMLA administrator unless it is not practicable despite the employee's diligent, good faith efforts, or the County's FMLA administrator agrees to provide more than 15 calendar days to submit the certification.
- b. **The medical certification (an original, not a copy) must be submitted to the FMLA administrator.** If the medical certification is not received 15 days after requested, the County may delay the taking of a FMLA leave or may grant leave subject to receipt of certification. If 30 days' notice is not provided by the employee prior to the FMLA leave, then certification should be provided before leave begins.
- c. The County's FMLA Administrator may require a second opinion. The County's FMLA administrator cannot use the same HCP on a regular basis for second opinions. The County pays for a second opinion. The medical certification must include a date when the SHC began, probable duration of the SHC, appropriate medical facts known by the HCP, a statement that the employee cannot perform the essential functions of his/her job or the employee is needed to care for an eligible family member and date(s) of medical treatment.
- d. If necessary, because the original HCP's opinion (the employee's) and the opinion (second) of the County's designated HCP differ, the County may obtain a third opinion at the County's expense. The County and the employee must jointly approve the third HCP and this third opinion shall be final and binding. (Re-certification may be requested every 30 days for a chronic condition. However, the County may not request re-certification until after 30 days has passed from the end of the leave date previously specified in a medical certification by a HCP unless 1) the circumstances described by the previous certification have changed significantly (e.g., the severity of the condition,

the duration or frequency of absences); or 2) the County receives information casting doubt upon the employee's stated reason for the absence; or 3) the employee requests a leave extension.

- e. If the medical certification is incomplete or insufficient, the County's FMLA administrator must notify the affected employee in writing, stating that additional information is required. The employee will have seven (7) calendar days to provide the additional information. If an employee fails to submit a complete and sufficient medical certification despite the opportunity to correct the deficiency, FMLA leave may be denied. The County's FMLA administrator may contact the HCP directly for clarification to understand handwriting and meaning of response and authentication. The County's FMLA Administrator provides a copy of the certification and requests verification that the information on the form was completed and/or authorized by the HCP who signed it. The County and its designee **may request no additional information**. The County or its designee may contact the HCP directly only after the County's FMLA administrator has notified the employee that the medical certification was deficient, and the employee failed to have the HCP cure the deficiency(-ies).
- f. The County or its designee may not request medical certification for a FMLA family leave due to the birth, placement of a child for foster care (federal law only), or adoption.

H. WHAT ARE THE COUNTY'S RESPONSIBILITIES?

The County or its designated FMLA administrator must inform the employee in writing:

- i. Eligibility Notice.
 - a. When an employee requests FMLA leave, or when the County acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer or designee must notify the employee of his/her eligibility to take FMLA leave within five (5) business days, absent extenuating circumstances and that the leave will be counted against the employee's 12-month entitlement under the FMLAs. The County's FMLA administrator should notify an employee when FMLA eligibility is determined that a fitness for duty certification will be required before an employee will be allowed to return to work from a FMLA leave due to his/her own SHC. Such certification may be requested only regarding the particular SHC that caused the employee to need FMLA leave.
- ii. Fitness-For-Duty Certification.
 - a. At the time leave is approved or prior to returning to work, the County will notify employees in writing whether a fitness-for-duty certification is required before returning to work. A fitness-for-duty certification can only be required from employees returning from continuous leaves regarding their own serious health condition. A fitness-for-duty certification can be required every thirty (30) days during intermittent or reduced schedule leaves if a reasonable safety concern exists. Required fitness-for-duty certification must be complete and sufficient. If a required fitness-for-duty certification is not complete or sufficient, employees will be notified in writing of the deficiency and give seven (7) calendar days to provide the required information. If the employee fails to provide the required information, the employer may delay the employee's return to work or deny the leave. An employee will not

be restored to his or her original or equivalent position if they are unable to perform the functions of their job because of a mental or physical condition.

iii. Medical Certification.

- a. The County's FMLA administrator should request that an employee furnish certification at the time the employee gives notice of the need for leave or within five business days or, in the case of unforeseen leave, within five (5) business days after the leave commences. The County must allow an employee fifteen (15) calendar days to submit the medical certification to the FMLA administrator.
- b. The County's FMLA administrator shall advise an employee whenever the County finds a certification incomplete or insufficient, and shall state in writing to the employee what additional information is necessary to make the certification complete and sufficient. If the applicable entries have not been completed, are vague, ambiguous, or non-responsive the employee has seven calendar days to cure any such deficiency. Failure to comply may result in denial of FMLA leave.
- c. A medical certification from a health care provider should include the following information:
 - i. The name, address, telephone number, and fax number of the health care provider and type of medical practice/specialization;
 - ii. The approximate date on which the serious health condition commenced, and its probable duration;
 - iii. A statement or description of the appropriate medical facts regarding the patient's health condition for which FMLA leave is requested. The medical facts must be sufficient to support the need for leave. Such medical facts may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment, or any other regimen of continuing treatment;
 - iv. If the employee is the patient, information sufficient to establish that the employee cannot perform the essential functions of the employee's job, and the likely duration of such inability;
 - v. If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member is in need of care, and an estimate of the frequency and duration of the leave required to care for the family member;
 - vi. Information sufficient to establish the medical necessity for intermittent or reduced schedule leave for planned medical treatment or unforeseeable episodes of incapacity and an estimate of the dates and duration of such treatments or duration of episodes of incapacity and any periods of recovery; and,
 - vii. If an employee requests leave on an intermittent or reduced schedule basis to care for a covered family member, a statement that such leave is medically necessary to care for the family member, which can include assisting in the family member's recovery, and an estimate of the frequency and duration of the required leave.

iv. Recertification.

- a. The County or its designee may request recertification no more often than every 30 days and only in connection with an absence by the employee. If the medical certification indicates that the minimum duration of the condition is more than 30 days, the County's FMLA administrator must wait until that minimum duration expires before requesting a recertification. The County may request a recertification of a medical condition every six months in connection with an absence by the employee. The County's FMLA administrator may request recertification in less than 30 days if:
 - i. The employee requests an extension of leave;
 - ii. Circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications). If an employee has a pattern of using unscheduled FMLA leave for migraines in conjunction with his or her scheduled days off, then the timing of the absences also might constitute a significant change in circumstances sufficient for an employer to request a recertification more frequently than every 30 days; or
 - iii. The employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification. If an employee is on FMLA leave for four weeks due to the employee's knee surgery, including recuperation, and the employee plays in softball league games during the employee's third week of FMLA leave, such information might be sufficient to cast doubt upon the continuing validity of the certification allowing the County's FMLA administrator to request a recertification in less than 30 days.
- b. The employee must provide the requested recertification to the County's FMLA administrator within the timeframe requested (which must allow at least fifteen (15) calendar days after the administrator's request).
- c. Any recertification requested by the County's FMLA administrator shall be at the employee's expense.

It is the right and obligation of the County or its designee to determine whether leave is FMLA eligible. The County may apply FMLA to an employee's leave time.

An employee cannot collect unemployment compensation while on FMLA.

I. **JOB BENEFITS AND PROTECTION (restore to the same level of benefits before the leave)**

- i. Although under FMLA, an employee is not entitled to the accrual of additional benefits or seniority that would have occurred during the period of leave, an employee on FMLA leave does accrue hours of service during periods of paid leave.
- ii. An employee must be restored to an equivalent position with equivalent benefits, pay and other terms and conditions of employment upon return to work after a FMLA leave.
- iii. An employee may not be denied health insurance upon his/her return to work. Full benefits must be immediately restored with no waiting period, exclusion of pre-existing conditions, etc.

- iv. An employee may continue their health insurance while on FMLA, under the same terms and conditions as before the leave commenced, provided the employee pays the employee portion of their premiums.
- v. When substituting paid time off for unpaid leave, the employee's normal deductions will be withheld from their pay.
- vi. For unpaid leaves, the employee's premium deductions will be placed in arrears, and collected upon the employee's return to work.
- vii. The County, at its discretion, may opt to require manual payment of the employee's premiums in lieu of the arrears process.
- viii. If an employee fails to pay the employee portion of health insurance coverage while on FMLA leave, either through the arrears process or manual billing, Milwaukee County will terminate coverage prospectively. The County must give 15 days notice prior to termination of coverage.
- ix. The County will attempt to recover any past due employee premiums, or premium balances held in arrears whether the employee returns to work or not.
- x. For represented and non-represented employees, seniority continues to accrue.
- xi. Under FMLA, benefits do not continue to accrue during a leave. The County will provide benefits after an employee returns from an unpaid leave under FMLA which accrue during the unpaid leave pursuant to union contracts, civil service rules, and county ordinances.

The County will not:

- i. Use the taking of FMLA leave as a reason to take any adverse employment action against an employee who took a FMLA leave, or
- ii. Count a FMLA leave under "No Fault" attendance policies, or
- iii. Refuse to hire or promote an employee because the employee took a FMLA leave.

J. MISCELLANEOUS

- i. Notices (posters) stating the employee's rights under the FMLAs and the County's policies must be posted in one or more conspicuous places where employees are likely to see the posters.

K. TIMECARD ENTRIES

- i. Employees should continue to code their time off work as usual. Payroll clerks will adjust the codes with the appropriate FMLA designation upon receipt of the employees Milwaukee County Payroll Supplement or direction of the FMLA administrator.

L. UNLAWFUL ACTS

- i. It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

M. RELIEF

- i. Appeals:
 - a. FMLASource Appeal: Employees may appeal a denial by calling or emailing FMLASource.
 - b. Milwaukee County Appeal: Employees may appeal an adverse determination by the administrator to Milwaukee County. To submit an appeal, the employee must submit a request to review in writing, including all information that the employee would like to have considered, within 30 days of the administrator's decision. Milwaukee County will respond within 10 business days of receipt of a requested FMLA appeal. All appeals must be submitted to the Milwaukee County FMLA administrator via e-mail at FMLA@milwaukeecountywi.gov. Incomplete requests or requests received more than 30-days following the administrator's decision will not be considered.
- ii. Enforcement:
 - a. Equal Rights Division (ERD): A complaint may also be filed with the state Equal Rights Division ("ERD") within 30 days of an alleged violation of the Wisconsin FMLA. The ERD will investigate a complaint and may provide an administrative hearing if the issue is not resolved.
 - b. US Department of Labor (DOL): Under the federal FMLA, a complaint may be filed with the U.S. Department of Labor (DOL). An employee may bring a civil action under federal law, which must normally be brought within two years of the last event constituting a violation for which relief is sought. The DOL will investigate, resolve the case, or bring an action in federal court. The DOL may file a cause of action in federal court within two years or three years if there is a willful violation.
- iii. **State remedy**
 - a. Leave time, reinstatement, back pay, benefits up to two years, costs, and reasonable actual attorney fees.
- iv. **Federal remedies**
 - a. Lost wages, overtime, salary or employment benefits actual monetary losses (e.g., cost of substitute care), prejudgment interest, possible liquidated damages (double the amount of monetary loss) but not if the DOL obtains an injunction prohibiting any further violations of the FMLA. An employee may recover reasonable attorney's fees and costs, employment, reinstatement, promotion.

N. FEDERAL MILITARY CAREGIVER LEAVE

- i. Eligible employees are entitled to FMLA leave to care for a covered service member (a current member or veteran of the Armed Forces, including a member or veteran of the National Guard or Reserves), who is undergoing medical treatment, recuperation, or therapy, is otherwise on the temporary disability retired list, for a serious injury or illness.
- ii. A "serious injury or illness," in the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by a covered service member in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.

- iii. In the case of a covered veteran, “serious injury or illness” means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces, or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces, and manifested itself before or after the member became a veteran and is:
 - a. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member’s office, grade, rank or rating; or
 - b. A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (“VASRD”) of 50% or greater, and such VASRD rating is based, in whole or part, on the condition precipitating the need for military caregiver leave; or
 - c. A physical or mental condition that substantially impairs the covered veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or
 - d. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
 - e. “Outpatient status” means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
 - f. In order to care for a covered service member, an eligible employee must be the spouse, son, daughter, parent or next of kin of a covered service member.

O. LEAVE BECAUSE OF A QUALIFYING EXIGENCY

- i. Eligible employees may take FMLA leave while the employee’s spouse, son, daughter or parent (the “military member” or “member”) is on covered active duty or called to covered active duty status (or has been notified of an impending call or order to covered active duty) for one or more of the following qualifying exigencies:
 - i. Short-notice deployment;
 - ii. Military events and related activities;
 - iii. Childcare and school activities;
 - iv. Financial and legal arrangements;
 - v. To attend counseling provided by someone other than a healthcare provider;
 - vi. Rest and recuperation;
 - vii. Post-deployment activities;
 - viii. Parental care; or
 - ix. Additional activities – Events which arise out of the covered military member’s active duty or call to active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and as to both the timing and duration of such leave.

v. FORMS

The following attached forms are to be used in compliance with this procedure.

Form #	Form Title
02.07.01(a)	Milwaukee County FMLA Payroll Supplement Form