

Niagara County Family and Medical Leave Policy adopted per Res. #AD-062-08

Family and Medical Leave Act Covered Leave

The County provides Family and Medical Leave Act (“FMLA”) leaves of absence without pay to employees who are eligible under the law, and who wish to take time off from work duties to fulfill family obligations relating directly to childbirth, adoption, or placement of a foster child; to care for a child, spouse, or parent with a serious health condition; or in the event of the employees’ own serious health condition. A serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility; or continuing treatment by a health care provider. Absences or instances of lateness covered by an employee’s use of approved FMLA leave are not considered grounds for disciplinary action.

The County measures FMLA by a “rolling” 12-month period measured backward from the date an employee uses any FMLA leave. The employee is entitled to the equivalent of 12 weeks of FMLA leave in a period that begins on the date FMLA leave entitlement is determined. The measurement of FMLA hours used, looks back from the date usage begins, to exactly one year prior. EXAMPLE: An employee requests FMLA on July 23, 2008. Before FMLA is granted, the administrator will review any FMLA hours that may have been taken from July 23, 2007, until July 22, 2008. FMLA hours used during that period, will determine the hours that remain, to be utilized per the new request, as of July 23, 2008. Using a 480 hour potential maximum, if 180 hours had been used in that period, the employee would have 300 hours available as of July 23, 2008. To utilize and track by this method, the same “look back” must be done for each passing day. As the year “rolls”, the “frame” of time measurement changes. In other words on the first day, the “year” is measured as July 23, 2007 – July 22, 2008. On the second day, the “year” is measured as July 24, 2007 – July 23, 2008, on the third day the “year” is measured as, July 25, 2007 – July 24, 2008 and so on.

Effective January 16, 2009, The National Defense Authorization Act (NDAA) will amend the FMLA to allow eligible employees of covered employers to take FMLA-qualifying leave because of any qualifying exigency arising from the fact that a spouse, son, daughter or parent of the employee is on active duty or has been notified of an impending federal call or order to active duty in the Reserve or National Guard.

The NDAA also provides, effective January 16, 2009, that an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered, wounded service member or covered service member that becomes ill or is seriously injured while on active service is entitled to a total of 26 workweeks of leave during a single 12-month period to care for the covered service member with a serious illness or injury.

Eligibility

Niagara County will deem an eligible employee to be on a FMLA leave immediately upon commencing his or her qualified leave. FMLA leave will run concurrently with all other types of leaves. An employee must have completed twelve (12) consecutive months of service and worked at least 1,250 hours in the 12-month period preceding the leave to be eligible for such leave.

If the FMLA leave is planned in advance, requests for family or medical leave should be submitted to the Human Resources Department, using the County’s Certification of Health Care Provider form, at least thirty (30) days in advance of foreseeable events and as soon as possible for unforeseeable events.

Employees requesting FMLA leave related to the employees’ own serious health condition or the serious health condition of a child, spouse, or parent will be required to submit a Certification of Health Care Provider form verifying the need for leave, its beginning and expected ending dates, and the estimated

time required. Failure to provide a certificate may delay the start of FMLA leave. If FMLA leave is required to care for a family member of the employee with a serious health condition, the employee is required to indicate the type of care he or she will provide and an estimate of the time period such assistance is needed. If, at any time, the Human Resources Department questions the validity of the need for the leave, a subsequent recertification or second medical opinion may be required.

Eligible employees may request up to a maximum of twelve (12) weeks of FMLA leave within any 12-month period. Any combination of FMLA covered leave may not exceed this maximum limit. If this initial period of absence proves insufficient, consideration will be given to a written request for a single extension of no more than thirty (30) calendar days. Married employee couples may be restricted to a combined total of twelve (12) weeks leave within any 12-month period for childbirth, adoption, or placement of a foster child; or to care for a parent with a serious health condition.

Employees will be required to first use any accrued paid leave time such as sick time and vacation while taking FMLA leave. Once such benefits are exhausted, the balance of the leave will be without pay unless the employee is eligible for short-term disability benefits in accordance with applicable state law.

Maintenance of Benefits

Subject to the terms, conditions, and limitations of the applicable plans, the County will continue to provide health insurance benefits for the full period of the approved FMLA covered leave. Any share of group health plan premiums which had been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period. If an employee's share of the premium payment is more than thirty (30) days late, his or her group health insurance benefits may be terminated, subject to the availability of continuation coverage under COBRA.

All benefits that operate on an accrual basis, *e.g.*, vacation and sick days will cease to accrue during any period of FMLA leave which is unpaid for more than one-half (½) of the workdays in any given month. Accruals will resume upon return to active employment. Benefit and longevity dates will be adjusted for unpaid leave.

Return to Work

While on leave, employees are required to report in writing every thirty (30) days to their department head or designee regarding the status of the medical condition and their intent to return to work. If an employee gives unclear notice of intent not to return to work, Niagara County's obligation to restore the employee to employment ceases. An employee whose FMLA leave was occasioned by the employee's own serious health condition will be required to present a fitness for duty certificate from the employee's health care provider prior to being restored to employment.

So that an employee's return to work can be properly scheduled, an employee on family and medical leave is requested to provide the County with at least two weeks advance notice of the date the employee intends to return to work. When an FMLA leave ends, the employee will be reinstated to the same position, if it is available, or to an equivalent position for which the employee is qualified. Exceptions to this provision may apply if business circumstances have changed, *e.g.*, if an employee's position is no longer available due to job elimination. Exceptions may also apply for certain highly compensated employees under certain conditions.

Failure to return to work on the agreed-upon date will constitute the employee's resignation of his or her position.