

# RESOLUTION

## RE: FMLA POLICY

**WHEREAS**, The County is required by federal law to maintain a policy with regard to Family Medical Leave; and

**WHEREAS**, The County has previously maintained a policy but the law has changed and the policy has been updated to note those changes; and

**WHEREAS**, it is anticipated that the law will be amended from time to time and the County must at all times comply with the FMLA law as amended.

**BE IT THEREFORE RESOLVED** that the County Board approves the amended FMLA policy as presented and further directs that said policy should be kept updated with any required changes due to a changes in the law and that the policy be made available to any employee or Board member.

**PRESENTED, APPROVED, AND RESOLVED** by the County Board of Vermilion County, Illinois at its February 10, 2015, A.D. meeting.

Dated this 10<sup>th</sup> day of February, 2015 A.D.

AYE 21 NAY 0 ABSENT 5

VACANCY 1

Michael T. Marron  
Vermilion County Board Chairman

ATTEST: Cathy Jenkins  
Clerk of the County Board

Randall J. Bursey  
Approved to Form: State's Attorney

Res: 15-0205

## 6.11.1 Family and Medical Leave

Vermilion County recognizes the importance of family and medical responsibilities. Accordingly, Vermilion County provides time away from work for eligible employees to recover from an injury, illness or condition or to care for a family member in accordance with the Family and Medical Leave Act of 1993 ("FMLA") and the National Defense Authorization Act for FY 2008 ("NDAA").

The NDAA amended the FMLA to provide two types of military-related family leave for employees who are otherwise FMLA-eligible — "Qualifying Exigency Leave" and "Military Caregiver Leave." This policy adopts the law as currently amended. This policy will be updated as the law changes. Please consult your supervisor or the Human Resources Director for any questions.

### Are You Eligible for FMLA Leave?

To be eligible to apply for any FMLA leave under this policy:

1. You must have worked for Vermilion County:
  - a. for a total of at least 12 months; **and**
  - b. for at least 1,250 hours during the 12 months immediately preceding the start of the leave; **and**
2. You must also work at a worksite:
  - a. with 50 or more employees; **or**
  - b. where 50 or more employees are located within 75 miles of your worksite.

If you do not meet this eligibility test, you are not eligible for any type of FMLA leave.

### Qualifying Reasons for FMLA Leave

If you are eligible under the criteria set forth above, Vermilion County will grant you FMLA leave if you follow the procedures in this policy set forth below and request the leave under any of the following six FMLA Qualifying Reasons for leave.

After you identify for which Qualifying Reason you seek FMLA leave, check the "Definitions" section of this policy below for the meaning of the specific terms in that Qualifying Reason. Here are the six Qualifying Reasons:

1. The birth of your child if the leave is completed within twelve (12) months of the date of birth of the child;

2. The placement for adoption or foster care of a child with you if the leave is completed within 12 months of the date of placement of the child;
3. To care for an Eligible Family Member if that individual has a Serious Health Condition;
4. For your own Serious Health Condition that renders you unable to perform the essential functions of your job;
5. Qualifying Exigency Leave – this leave is taken because of a Qualifying Exigency arising out of the fact that a Covered Military Member in your family is on covered Active Duty Status (or has been notified of an impending call or order to such covered Active Duty) in the Armed Forces; or
6. Military Caregiver Leave – this leave is taken because a Covered Service member in your family has a Serious Illness or Injury and needs your care.

### **How Long is the Leave Benefit?**

You are entitled to a maximum of 12 weeks of unpaid leave during a rolling 12-month period.

If you take Qualifying Exigency Leave, you are entitled to a maximum of 12 weeks of Qualifying Exigency Leave during a rolling 12-month period.

If you take Military Caregiver Leave, you are entitled to a maximum of 26 weeks within the 12 months following the first day of Military Caregiver Leave, regardless of the [e.g., rolling 12-month period or calendar year] used by Vermilion County for other FMLA leave reasons. The 26 weeks is calculated on a per service member, per injury basis.

You may apply any accrued paid vacation; personal days; or illness, injury and recovery leave or short-term disability leave to FMLA leave. FMLA leave will run concurrently with any other type of paid leave. Any remaining FMLA leave time left after the exhaustion of other leaves will be unpaid leave.

### *Spouses' Combined Leave*

If you and your spouse are both eligible and employed by Vermilion County, you are jointly entitled to a combined total of 12 weeks of leave for the birth of your child or for placement for adoption or foster care of a child with you or for the care of a parent with a Serious Health Condition. Likewise, spouses who are both

employed by Vermilion County are jointly entitled to a combined total of 26 weeks of Military Caregiver Leave to care for a Covered Service member.

## Definitions

To help you better understand if you have a FMLA Qualifying Reason for leave, the following definitions are provided:

- *Eligible Family Member*: an Eligible Family Member is your spouse, Son, Daughter, or Parent (but not a parent “in-law”).
- *Son or Daughter*: any child under 18 who is your biological, adopted, stepchild, legal ward, or foster child; or a child whom you supervise on a day-to-day basis (*in loco parentis*) and for whom you are financially responsible. A *Son or Daughter* is also any child over 18 who is incapable of self-care because of a mental or physical disability. For purposes of Qualifying Exigency Leave or Military Caregiver Leave, the age of the Son or Daughter is not limited.
- *Parent*: your biological parent, or one who stood in the place of (*in loco parentis*) your biological parent when you were a child.
- *Spouse*: your husband or wife.
- *Serious Health Condition*: a Serious Health Condition is an illness, injury, impairment or physical or mental condition that requires in-patient care in a hospital, hospice or residential medical care facility or that requires Continuing Treatment by a health care provider. It does not mean short-term conditions in which treatment and recovery are brief; routine physical exams; or voluntary or cosmetic treatments that are not medically necessary, unless in-patient hospital care is required.

*Continuing Treatment* means: (1) a period of incapacity of more than three consecutive, full calendar days plus treatment by a health care provider twice, or once with a continuing regimen of treatment; (2) any period of incapacity related to pregnancy or for prenatal care; (3) any period of incapacity or treatment for a Chronic Serious Health Condition; (4) a period of incapacity for permanent or long-term conditions for which treatment may not be effective; or (5) any period of incapacity to receive multiple treatments (including recovery from those treatments) for restorative surgery, or for a condition which would likely result in an incapacity of more than three consecutive, full calendar days absent medical treatment.

If the Serious Health Condition is under the period of incapacity of more than three consecutive, full calendar days and any subsequent treatment

or period of incapacity relating to the same condition, your first treatment visit (or only visit, if coupled with a regimen of continuing treatment) must take place within seven days of the first day of incapacity.

If the Serious Health Condition involves treatment of two or more times, the two visits to a health care provider must occur within 30 days of the first day of incapacity.

A *Chronic Serious Health Condition* is one that (1) requires Periodic Visits for treatment by a health care provider or nurse under the supervision of the health care provider, (2) continues over an extended period of time, and (3) may cause episodic rather than continuing periods of incapacity.

*Periodic Visits* for treatment of a Chronic Serious Health Condition means at least twice a year visits.

- *Key Employee:* You are a key employee if you are a salaried employee who is among the highest paid ten percent of all employees employed by Vermilion County within 75 miles of your worksite.
- *Qualified Exigency Leave:* This is leave that may be taken by you for any Qualifying Exigency arising out of the fact that a Covered Military Member is on Active Duty Status or on call to that status.
- *Qualifying Exigency:* The most common types of events considered a Qualifying Exigency are: attending military-sponsored functions, making appropriate financial and legal arrangements, arranging for alternative childcare, and attending counseling. This includes certain post-deployment exigencies, including reintegration activities for a period of 90 days following the termination of a Covered Military Member's Active Duty Status.
- *Covered Military Member:* A Covered Military Member for purposes of Qualifying Exigency Leave is your spouse, Son, Daughter, or Parent who is on Active Duty Status or on call to that status.
- *Active Duty Status:* Active Duty Status for purposes of Qualifying Exigency Leave means when a member of the National Guard or Reserves is under a call or order to active duty (or has been notified of an upcoming call or order) in support of a contingency operation. Family members of service members in the Regular Armed Forces are not entitled to Qualified Exigency Leave.
- *Military Caregiver Leave:* This is leave that may be taken by you to care for a Covered Service member with a Serious Injury or Illness. This care means providing physical or psychological care, transportation for care,

and/or time to make arrangements for care.

- *Covered Service member*: For purposes of Military Caregiver Leave, a Covered Service member is your spouse, Son, Daughter, Parent, or next of kin (your nearest blood relative) who has a Serious Injury or Illness. This leave applies to those service members, including veterans, of the Regular Armed Forces and the National Guard or Reserves, who are undergoing medical treatment, recuperation, or therapy, including outpatient status or being on the temporary disability retired list for a Serious Injury or Illness incurred in the line of duty on active duty.
- *Serious Injury or Illness*: For purposes of Military Caregiver Leave, Serious Injury or Illness means an injury or illness that was incurred by the service member in the line of duty on active duty in the Armed Forces (or that existed before the beginning of the service member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the service member medically unfit to perform the duties of the service member's office, grade, rank, or rating; and

For veterans, it means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or that existed before the beginning of the service member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

### **Notice Requirements**

When the need for leave is foreseeable, you must provide your supervisor with a written request for leave at least 30 days prior to the leave and must attempt to schedule the leave to minimize the effect on Vermilion County.

When the leave is not foreseeable, you must provide notice to your supervisor as soon as practicable after you determine you need the leave and comply with Employer's normal call-in procedures.

You may take leave intermittently (in periods of days or partial days) when medically necessary or occasioned by a Qualified Exigency. However, you must apply for and obtain approval from Vermilion County to take intermittent leave for the birth or care of your child, except pregnancy-related leave that would qualify as leave for a Serious Health Condition. As with FMLA leave taken in one block of time, if requesting FMLA leave on an intermittent basis, you must provide at least 30 days' notice when your need for FMLA leave is foreseeable. When it is not, you must notify Vermilion County as soon as practicable.

If you are absent due to illness or injury for more than three consecutive workdays, you are required to apply for FMLA leave under this policy, unless you are using compensatory time for your absence.

### **Certification**

Vermilion County will require you to provide certification for the need for family-related leave. To apply for leave, pick up the required documents/forms from the Human Resources Department. You must provide the certification within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

Employer also requires you to obtain a medical certification from the health care provider who is treating you or your family member. You may obtain certification forms from the Human Resource Department.

Vermilion County may directly contact your health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. Vermilion County will not use your direct supervisor for this contact. Before such direct contact with the health care provider, you will be given an opportunity to resolve any deficiencies in the medical certification. Failure to resolve any deficiencies may result in the delay or denial of leave.

To verify your Serious Health Condition, Vermilion County may, at its discretion and expense, require you to obtain the opinion of a second health care provider designated or approved by Vermilion County. If there is a conflict between the first and second opinions, Vermilion County may, at its discretion and expense, require a third opinion from a different provider. The third opinion will be binding.

Within five business days after you have submitted the appropriate certification form, your supervisor will complete and provide you with a written response to your request for FMLA leave.

### *Certification for Qualifying Exigency Leave*

Vermilion County will require certification of Qualifying Exigency leave. As is required for other types of FMLA leave, you must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

### *Certification for Military Caregiver Leave*

Vermilion County will require certification for the Serious Injury or Illness of the Covered Service member. As is required for other types of FMLA leave, you must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.

### *Intermittent Leave Certification*

After Vermilion County requests certification, you will have at least 15 calendar days to submit the paperwork to Vermilion County. If your medical certification is incomplete or insufficient, Vermilion County will specify in writing what information is lacking and allow you seven days to cure the deficiency.

Vermilion County can insist on a health care provider's estimate of how often you will need time off. Vermilion County may wait until that estimate is received to approve intermittent leave.

Employer may temporarily transfer you to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when your or your family member's leave is foreseeable and for planned medical treatment, including recovery from a Serious Health Condition or to care for your child after birth, or placement with you of a child for adoption or foster care.

*In the case of intermittent Military Caregiver Leave*, Vermilion County may transfer you, with equivalent pay and benefits, if you need leave on an intermittent or reduced leave schedule to care for a Covered Service member that is foreseeable based on planned medical treatment for the service member.

### *Recertification*

Vermilion County may request recertification for your or your family member's Serious Health Condition no more frequently than every 30 days and only when circumstances have changed significantly, or if you receive information casting doubt on the reason given for the absence, or if you seek an extension of your leave. Otherwise, Vermilion County may request recertification for your or your family member's Serious Health Condition every six months in connection with an FMLA absence. Vermilion County may provide your health care provider with your attendance records and ask whether the need for leave is consistent with your Serious Health Condition.

Certification/recertification must be returned to Vermilion County within 15 days. Failure to provide certification in the requested time period may result in the delay or denial of leave.



### *Fitness for Duty:*

Vermilion County will require a "fitness for duty" certification upon your return to work, if leave was taken for your own Serious Health Condition. The "fitness for duty" certification must certify that you are able to return to work and perform the essential functions of your position. [A copy of your job description will be supplied with the designation notice.]

### *GINA Information*

To comply with the Genetic Information Nondiscrimination Act of 2008 (GINA), Vermilion County will ask your health care providers to not provide any genetic information as defined by GINA when responding to a request for your or your family member's medical information, except as allowed by specific GINA exceptions.

### **While on Family and Medical Leave**

#### *Periodic Reporting*

Vermilion County requires you to report periodically to your supervisor as to your leave status and your return to work, once known. The frequency of that reporting requirement will be designated in writing.

#### *No Employment While on Leave*

You may not engage in gainful employment while on authorized leave under this policy. Acceptance of employment while on leave shall be deemed as voluntary termination of employment.

#### *Health Insurance Plans:*

During periods of unpaid leave, Vermilion County will continue providing health care coverage at the same level of any health benefit plans you are enrolled in at the time you take leave, as long as you continue to pay the portion of the premium that you made before taking the leave. This payment must be received in the County Board Office by the 25th day of each month. If the payment is more than 30 days late, your health care coverage may be dropped for the duration of the leave. Vermilion County will provide 15 days' notification prior to your loss of coverage.

If you choose not to return to work for reasons other than because of your or your family member's continued Serious Health Condition or a circumstance beyond your control, you must reimburse Vermilion County the amount it paid for your premiums during the leave period.

### *Paid Leave Benefits:*

When you are on unpaid leave under this policy, you will accrue benefits such as vacation and personal leave. Please ask your supervisor or the Human Resources Director if you have questions.

### *Life or Disability Insurance:*

If you contribute to a life insurance or disability plan, while on leave under this policy, you may request continuation of such benefits and make your portion of the premium payments. If you do not continue these payments, Vermilion County may discontinue coverage during the leave.

Vermilion County, in the alternative, may choose to maintain such benefits during the leave and pay your share of the premiums. Vermilion County may recover the premium costs incurred for paying your share, whether or not you return to work.

### **When You Return from Leave — Reinstatement**

Generally, when you return from FMLA leave, you will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms unless business circumstances have impacted the position. The position will be the same or one which is virtually identical in terms of pay, benefits and working conditions.

### *Key Employee Exception to Reinstatement*

A key employee is a salaried employee who is among the highest paid ten percent of all employees employed by Vermilion County within 75 miles of the employee's worksite. Vermilion County may refuse to reinstate certain key employees where restoration to employment will cause substantial and grievous economic injury to its operations. If you are a key employee, Vermilion County will notify you in writing of your status as a key employee, the reasons for denying job restoration, and provide you a reasonable opportunity to return to work after notification.

### **Exhaustion of Leave**

Your employment will be terminated when you have exhausted your FMLA leave unless you have additional leave as a reasonable accommodation under the Americans with Disabilities Act or pursuant to other policies of Vermilion County. FMLA leave will not be counted as an absence under Vermilion County's attendance policy.

## **Reporting Violations of this Policy**

If you are experiencing any violation of this policy, or if you know of, or suspect a violation of the policy by another employee or workplace participant, you must report it immediately to your supervisor, Chief Deputy, Department Head or Elected Official.

If you do not feel comfortable reporting as listed above or if you did report and are not satisfied with the response, then you should direct your report or dissatisfaction to the Human Resources Director or Civil Attorney.

Please note that you are not required to confront the person or persons who have given you reason to report. However, if you experience any violation of this policy, or if you know of or suspect violation of the policy by another employee or workplace participant, you must make a reasonable effort to make the violation known as soon as you experience or discover it. Discussing or reporting policy violations to any person not listed above does not constitute a report.

## **Retaliation Prohibited**

Retaliation can include, but is not limited to harassment, discrimination, bullying or any other unfair treatment or abuse of power.

If you believe you are being subjected to retaliation for reporting a violation of this policy, or participating in an investigation of this policy, you should report the retaliation immediately in the manner provided above, regardless of the accused's identity or position. Please note that you do not have to confront the person who is the source of the retaliation before reporting it, but to help prevent retaliation from continuing, you must report it.

Any employee or workplace participant who retaliates against another employee or workplace participant for making a good faith complaint of a violation of this policy, or for assisting in an investigation of a complaint of a violation of this policy, is subject to discipline or termination.

## **Workplace Investigations**

A report of retaliation for reporting a violation of this policy or a report of a violation of this policy that is made to those listed above will result in an appropriate investigation of the allegations. Vermilion County may use third parties to investigate allegations. All employees and workplace participants have a responsibility to cooperate fully with any investigation. The interviews, allegations, statements, and identities will be kept confidential, on a need-to-know basis, consistent with the law and the investigation process and goals. Unreasonable refusal to participate in an investigation may lead to discipline, including termination.

Those found to have violated this policy or to have retaliated against another in violation of this policy are subject to discipline including, but not limited to, termination, consistent with the law, the results of the investigation, the severity of the conduct, and the person's employment history, including any similar reports of prior violations and/or retaliation.

### **Knowingly False Reports Prohibited**

Any employee or workplace participant who makes a knowingly false report of a violation of this policy or retaliation will be subject to discipline, including termination.

### **Questions About This Policy**

If you have questions, suggestions or concerns about this policy, you should direct them to your supervisor, Chief Deputy, Department Head or Elected Official.

If you feel uncomfortable discussing your questions, suggestions or concerns about this policy with those listed above, you can direct them to the Human Resources Director or Civil Attorney.