



## Sample Family and Medical Leave Act Policy

Replace the text in **red** with the appropriate information specific to your business.

Footnotes are intended to help in the preparation of the policy, but should not be included in the final policy document.

**[Company Name]** (“the Company”) will provide Family and Medical Leave to its eligible employees. The Company posts the mandatory FMLA Notice and upon hire provides all new employees with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical Leave Act.<sup>1</sup>

This policy provides employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. If you have any questions, concerns, or disputes with this policy, you must contact **[insert name and contact information]** in writing.

### A. General Provisions

Under this policy, **[Company Name]** will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered servicemember with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

### B. Eligibility

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

- 1) The employee must have worked for the Company for 12 months or 52 weeks.
  - The 12 months or 52 weeks do not have to be consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years.<sup>2</sup>

<sup>1</sup> Employers are required to provide general notice about FMLA through multiple sources.

<sup>2</sup> Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, such as a collective bargaining agreement, stating the employer’s intention to rehire the employee after the service break.

- For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.<sup>3</sup>
- 2) The employee must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. This does not include time spent on paid or unpaid leave.<sup>4</sup>
  - 3) The employee must work in a worksite where 50 or more employees are employed by the Company within 75 miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

### C. Type of Leave Covered

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

- 1) The birth of a child and in order to care for that child.
- 2) The placement of a child for adoption or foster care and to care for the newly placed child.
- 3) To care for a spouse, child or parent with a serious health condition (described below).
- 4) The serious health condition (described below) of the employee.

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

A serious health condition is defined as:

- A condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider; or
- A chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity and requiring at least 2 periodic health care visits for treatment a year.

Employees with questions about what illnesses are covered under this FMLA policy or under the Company's sick leave policy are encouraged to consult with [\[designate FMLA Administrator\]](#).

If an employee takes sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the Company may designate all or some portion of related leave taken as leave under this policy.<sup>5</sup>

- 5) Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

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<sup>3</sup> If, for example, an employee was on a disability leave prior to achieving 12 months or 52 weeks of service but remains on payroll, at the 12-month/52-week point, the employee becomes FMLA eligible, even if he or she is not actively at work.

<sup>4</sup> If in airline industry: An airline flight crewmember or flight attendant will meet the FMLA hours of service eligibility requirement if he or she has worked or been paid for not less than 60 percent of the applicable total monthly guarantee (or its equivalent) and has worked or been paid for not less than 504 hours (not including personal commute time or time spent on vacation, medical, or sick leave) during the previous 12 months. Airline employees who are not flight crew employees continue to be covered under the general hours of service eligibility requirement which requires 1,250 hours of service in the previous 12 months.

<sup>5</sup> The employer must define a process to retroactively designate leave as FMLA leave.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service.<sup>6</sup>

- a) 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.
- b) 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."
- c) Under the FMLA, a "spouse" means a husband or wife, including those in same-sex marriages, which were made legal in all 50 United States as of June 26, 2015.

The qualifying exigency must be one of the following:

- a) Short-notice deployment
- b) Military events and activities
- c) Child care and school activities
- d) Financial and legal arrangements
- e) Counseling
- f) Rest and recuperation
- g) Post-deployment activities
- h) Additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave <sup>7</sup>

"Covered active duty" means:

- a) "Covered active duty" for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country.
- b) Covered active duty or call to covered active duty status in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation, in accordance with 29 CR 825.102.

The leave may commence as soon as the individual receives the call-up notice. This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

- 6) Military caregiver leave (also known as covered servicemember leave) to care for an injured or ill servicemember or veteran.<sup>8</sup>

An employee whose son, daughter, parent or next of kin is a covered servicemember may take up to 26 weeks in a single 12-month period to take care of leave to care for that servicemember.

Next of kin is defined as the closest blood relative of the injured or recovering servicemember.

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<sup>6</sup> The employer may require reasonable documentation of a family relationship.

<sup>7</sup> Will certification of a qualifying exigency leave be required?

<sup>8</sup> Will documentation be required for military caregiver leave?

The term “covered servicemember” means:

- a) A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- b) A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The term “serious injury or illness” means:

- a) In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in 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 line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and
- b) In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered servicemember, means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating.
- c) Outpatient status, with respect to a covered servicemember, 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.

### **D. Procedure for Requesting FMLA Leave**

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the HR manager. Within five business days after the employee has provided this notice, the HR manager will complete and provide the employee with the Notice of Eligibility and Rights.<sup>9</sup>

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days’ notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the Company’s usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

### **E. Designation of FMLA Leave**

Within five business days after the employee has submitted the appropriate certification form, the HR manager will complete and provide the employee with a written response to the employee’s request for FMLA leave.

### **F. Amount of Leave**

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<sup>9</sup> Will you use template forms from the DOL or use another form (state-specific or employer designed)?

An eligible employee can take up to 12 weeks for the FMLA circumstances (1) through (5) above under this policy during any 12-month period. The Company will measure the 12-month period as **[how you will measure the FMLA “year”]**. Each time an employee takes leave, the Company will compute the amount of leave the employee has taken during the FMLA year and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA circumstance (6) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the Company will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If spouses both work for the Company and each spouse wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the spouses may only take a combined total of 12 weeks of leave. If spouses both work for the Company and each spouse wishes to take leave to care for a covered injured or ill servicemember, the spouses may only take a combined total of 26 weeks of leave.

### **G. Intermittent Leave or a Reduced Work Schedule**

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill servicemember over a 12-month period).

The Company may temporarily transfer an employee<sup>10</sup> 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 leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption or foster care of a child, the Company and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.<sup>11</sup>

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the Company before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

### **H. Use of Paid and Unpaid Leave <sup>12</sup>**

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<sup>10</sup> Employers may choose whether to temporarily transfer employees on intermittent FMLA leave.

<sup>11</sup> Employers may choose whether to allow intermittent leave to care for or bond with a newborn, newly placed adopted or foster child.

<sup>12</sup> Will paid leave, including vacation, PTO and sick time be substituted for unpaid time; will FMLA leave run concurrent with workers' compensation, short- and long-term disability?

An employee who is taking FMLA leave must use all paid vacation, personal or sick leave prior to being eligible for unpaid leave. Sick leave may be run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave policy.

Disability leave for the birth of the child and for an employee's serious health condition, including workers' compensation leave, will be designated as FMLA leave and will run concurrently with FMLA. An employee who is taking leave for the adoption or foster care of a child must use all paid vacation, personal or family leave prior to being eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation and personal leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid vacation and personal leave prior to being eligible for unpaid leave.

### **I. Certification for the Serious Health Condition of the Employee or the Employee's Family Member**

The Company will require certification for the serious health condition of the employee's or the employee's family member. The employee 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.<sup>13</sup>

In the event that medical certification received is incomplete or insufficient, the employee will be allowed seven days to provide the requested information. If the employee is unable or unwilling to provide the additional information the Company may deny leave under the FMLA.<sup>14</sup>

The Company may directly contact the employee or employee's family member's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. In compliance with HIPAA Medical Privacy Rules, the Company will obtain the employee's permission for clarification of individually identifiable health information.

The Company has the right to ask for a second opinion if it has reason to doubt the certification.<sup>15</sup> The Company will pay for the employee or employee's family member to get a certification from a second doctor, which the Company will select. The Company may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the Company will require the opinion of a third doctor. The Company and the employee will mutually select the third doctor, and the Company will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second or third opinion.

### **K. Certification of Qualifying Exigency for Military Family Leave<sup>16</sup>**

The Company will require certification of the qualifying exigency for military family leave. The employee 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.

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<sup>13</sup> Employers can decide whether to require certification, what form to use and may also choose to include a job description.

<sup>14</sup> Employers may choose to contact the health care provider directly if an employee requesting leave under FMLA provides incomplete or insufficient information.

<sup>15</sup> Employers may choose to require second opinions when there is reason to doubt the validity of information received.

<sup>16</sup> Employers may choose to request certification for an exigency leave and for military caregiver leaves, using either the DOL form or a form that requests the same information.

### **L. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave**

The Company will require certification for the serious injury or illness of the covered servicemember. The employee 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.

### **M. Recertification<sup>17</sup>**

The Company may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the Company may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The Company may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

### **N. Employee Status and Benefits During Leave**

While an employee is on leave, the Company will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the Company will require the employee to reimburse the Company the amount it paid for the employee's health insurance premium during the leave period.

Under current Company policy, the employee pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment.<sup>18</sup> If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave.

The Company will provide 15 days' notification prior to the employee's loss of coverage.

If the employee contributes to a life insurance or disability plan, the Company will continue making payroll deductions while the employee is on paid leave.<sup>19</sup> While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the Company may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the Company may discontinue coverage during the leave. If the employer maintains coverage, the Company may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

### **O. Intent to Return to Work from FMLA Leave**

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<sup>17</sup> Employers may request recertification but may not request second and third opinions.

<sup>18</sup> The employer must define the process by which employees will make payments for continuation of benefits.

<sup>19</sup> An employee's entitlement to benefit other than group health benefits during a period of FMLA covered leave is determined by the employer's established policy for providing such benefits when the employee is on other forms of leave.

On a basis that does not discriminate against employees on FMLA leave, the Company may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

### **P. Employee Status After Leave**

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider.<sup>20</sup> Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one which is virtually identical in terms of pay, benefits and working conditions. The Company may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

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<sup>20</sup> An employer may require that an employee present a fitness for duty certificate upon return from a FMLA leave provided that notice of this requirement was included in the designation notice. This requirement must be included in the employer's response to the FMLA request.