

# **YAKIMA COUNTY**

## **FAMILY AND MEDICAL LEAVE POLICY**

### **POLICY NO. HR-008**

Signed Copy Available at  
Yakima County Human Resources  
128 N. 2<sup>nd</sup> Street, Room B27  
Yakima, WA 98901

#### **I. Policy Statement**

It is the policy of Yakima County to provide eligible employees up to 12 workweeks of family and medical leave during any 12-month period, in accordance with the Family and Medical Leave Act of 1993 (FMLA). Additionally, employees may receive:

- 12 workweeks of leave for a “qualifying exigency”
- Up to 26 workweeks of leave in a single 12-month period to care for a covered servicemember with a serious illness or injury.

The leave may be paid, unpaid, or a combination, depending on the circumstances and as specified in this policy.

#### **II. Definitions**

The meaning of terms used in this policy are as provided in the definitions section of the FMLA regulations ([Title 29 CFR §825.102](#)) and as otherwise provided in the FMLA regulations, except:

1. **12-Month Period:** The 12-month period measured forward from the date the employee’s FMLA leave begins. Under this definition, an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period. For Military Caregiver Leave, the 12-month period begins on the first day of Military Caregiver Leave and ends 12 months later.
2. **Spouse:** A husband or wife as defined or recognized in the state where the employee was married, including common law or same-sex marriages (excludes civil unions or domestic partnerships).
3. **Parent:** A biological, adoptive, step or foster parent, or someone who stood *in loco parentis* to the employee when the employee was a child. This term does not include a parent-in-law.
4. **In Loco Parentis – In the Role of a Parent to a Child:** Persons who are “*in loco parentis*” include those with day-to-day responsibilities to care for or financially support the child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not required.
5. **Child:** A biological, adopted or foster child, stepchild, legal ward or child of a person standing *in loco parentis*, and is under age 18 or 18 or over and incapable of self-care because of a mental or physical disability at the time the employee’s FMLA leave is to commence. For Military Family Leave, the child may be any age.

6. **Next of Kin – Military Caregiver Leave:** “Next of kin” means the servicemember’s nearest blood relative, and/or whom the servicemember has designated as the “next of kin”. If the service member does not designate a next of kin, the order of priority other than spouse, parent, son or daughter is: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins.
7. **Military Family Leave:** Available to eligible family members of military servicemembers:
  - A. **Qualifying Exigency Leave:** A period of up to 12 weeks of leave for qualifying exigencies due to the foreign deployment of the employee’s spouse, son, daughter or parent who is a member of the Armed Forces (including the National Guard and Reserves).
  - B. **Military Caregiver Leave:** A period up to a total of 26 workweeks of leave which is available during a single 12 month period for the care of a covered service member with a serious injury or illness if the employee is the servicemember’s spouse, child, parent or next of kin.
8. **Covered Service Member: Defined as:**
  - A. Current Servicemember: A covered servicemember means a current member of the Armed Forces, including a member of the U. S. 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. Veteran: A covered servicemember means a veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness, and who was discharged within the previous five years before the employee takes military caregiver leave to care for the veteran.
9. **Qualifying Exigency:** means any one or more of the following:
  - A. Short notice deployment (seven or less calendar days prior to the date of deployment);
  - B. Military events and related activities (in advance of and during deployment, including family support or assistance programs and informational briefings);
  - C. Childcare and related activities (e.g., to arrange for alternative childcare, provide childcare on an urgent, immediate-need basis or to attend meetings at a school or daycare facility);
  - D. Financial and legal arrangements (e.g., to prepare and execute powers of attorney, enroll for military health care or to prepare a will or living trust);
  - E. Counseling (non-medical, for oneself, the service member or a child);
  - F. Rest and recuperation (up to fifteen days for each);
  - G. Post-deployment activities (to attend ceremonies and briefings for a period of 90 days or to address issues arising from the service member’s death);

- H. Certain parental care activities for the military member's parent who is incapable of self-care
- I. Additional activities agreed to by the Department Head / Elected Official or designee and employee

10. **Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. The FMLA does not apply to routine medical examinations, such as a physical, or to common medical conditions, unless complications develop.

11. **“Serious Injury or Illness for a Current Service Member”** means an injury or illness incurred by a service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating. It includes injuries or illnesses that existed before the beginning of the service member’s active duty and were aggravated by service in the line of duty on active duty in the Armed Forces.

12. **“Serious Injury or Illness for a Covered Veteran”** means an injury or illness that was incurred or aggravated by the member 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 his or her office, grade, rank, or rating; OR
- B. A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition causing the need for caregiver leave; OR
- C. A physical or mental condition because of a disability or disabilities related to military service that substantially impairs the veteran’s ability to work or would do so in absence of treatment ; OR
- D. An injury for which the veteran is enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

13. **“Health care provider”:** means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) in the state in which the doctor practices or any other person determined to be capable of providing health care services including: (within the scope of their practice) podiatrist, dentist, clinical psychologist, optometrist, clinical social worker, nurse midwife, nurse practitioner, Christian Science practitioner or any health care provider from whom Yakima County’s group health plans will accept certification for the existence of a serious health condition to substantiate a claim for benefits.

14. **Inpatient care:** An overnight stay in a hospital, hospice or residential medical facility, including any period of incapacity or subsequent treatment in connection with such inpatient care.

15. **Incapacity:** The inability to work, attend school or perform other regular daily activities due to the serious health condition or treatment thereafter or recovery there from.

16. **“Continuing treatment”** includes any one or more of the following:

A. **Inc incapacity Plus Treatment:** 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:

- 1) Two or more in-person visits to a health care provider within 30 (thirty) days of the first day of incapacity, unless extenuating circumstances exist. The first visit must be within seven days of incapacity; or
- 2) At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under supervision of the health care provider.

B. **Pregnancy:** Any period of incapacity due to pregnancy or for prenatal care.

C. **Chronic Conditions:** Any period of incapacity or treatment for such incapacity due to a chronic serious health condition which:

- 1) Requires periodic visits, at least twice a year, for treatment by a health care provider or by a nurse under the direct supervision of a health care provider;
- 2) Recurs over an extended period of time (including recurring episodes of a single underlying condition); and
- 3) May cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.)

D. **Permanent or Long Term Conditions:** A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective, but requires the continuing supervision of a health care provider (e.g. Alzheimer’s’ severe stroke or terminal stage illness).

E. **Conditions Requiring Multiple Treatments:** Restorative surgery after an accident or other injury, or a condition that would likely result in a period of incapacity of more than three consecutive full calendar days if the employee or employee’s family member did not receive the treatment.

### **III. Eligibility**

1. An employee is eligible if they meet all of the following conditions:

A. An employee must have worked for Yakima County for at least 12 months, or 52 weeks as of the date the FMLA leave will start. The 12 months or 52 weeks do not need to have been consecutive,

but employment prior to a seven-year break in service shall not qualify as time worked. 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 the week or if the employee is on leave during the week.

B. The employee must have worked at least 1,250 hours in the 12 months immediately preceding the date leave will begin. Paid time off and unpaid time off are not counted as part of the 1,250 hours.

#### **IV. Leave Types**

1. FMLA leave may be taken for:

- A. The birth of the employee's child, adoption or placement of a child with the employee for adoption or foster care, and to bond with the newborn or newly-placed child;
- B. To care for a spouse, child or parent of the employee with a serious health condition, including incapacity due to pregnancy and for prenatal medical care.
- C. The employee's own serious health condition that makes the employee unable to work, including incapacity due to pregnancy and for prenatal medical care;
- D. A qualifying exigency due to the employee's family member's covered active duty or call to covered active duty status.
- E. Military caregiver leave for a family member who is a current servicemember or veteran with a serious injury or illness.

2. **Spouses who Work for the Same Employer:** If both spouses work for Yakima County, they share a total of 12 workweeks of FMLA leave per year for:

- A. The birth of a child or placement of a child with the employee for adoption or foster care. Leave for these reasons must be taken within one year of the date of birth or placement of the child.
- B. Care for a parent with a serious health condition.
- C. In the context of Military Family Leave, the shared amount of time both spouse can take is limited to the combined total of 26 workweeks to care for a military family member with a serious injury or illness.

3. Spouses who work for the same employer may each use a total of 12 workweeks of FMLA leave in a leave year for:

- A. Their own serious health condition,
- B. To care for a spouse or child with a serious health condition, or

- C. Due to a qualifying exigency
- 4. Employees with questions about what types of absences or illnesses are covered under this FMLA policy or Yakima County's Leave of Absence policy are encouraged to contact the Human Resources Leave Coordinator for clarification or assistance.

5. **Leave Calculation:**

- A. In cases where an employee's initial leave for a condition evolves into a serious health condition and the employee requests extended leave under this policy, Yakima County may retroactively designate some or all of the earlier related leave toward the FMLA entitlement, as long as the previous leave meets the eligibility requirements.
- B. Each time an employee takes leave under this policy, Human Resources will calculate how much leave an employee has used and deduct it from the employee's FMLA leave balance accordingly. The balance remaining is the amount of leave an employee still has available at that time.

## **V. Employee Benefits During Leave**

- 1. **Health Insurance Benefits (Coverage)**
  - A. Yakima County is responsible and will maintain the employee's health insurance benefits during the period of FMLA covered leave at the same level and under the same conditions as if the employee had continued to be in paid and/or working status.
- 2. **Health Insurance Premiums**
  - A. Yakima County will continue to pay the County's paid portion of the employee's health insurance premiums during the period of FMLA covered leave, including applicable voluntary benefits. Employees remain responsible for paying their portion of the health insurance premiums, any optional insurance coverage premiums, and other payroll deductions, even if the leave is unpaid.

**Note:** If an employee fails to return to work after their FMLA leave, unless the reason for not returning is due to a continued serious health condition, Yakima County can recover premiums and may require the employee to repay the full amount of premiums paid during the leave period.
  - B. Under Yakima County's current policy, if an employee on FMLA leave:
    - 1) **is in paid status:** Yakima County will continue to deduct the employee's share of the premium from the regular payroll check.
    - 2) **is in unpaid status:** When the employee has insufficient earnings to cover their portion of the health insurance premiums, Yakima County may maintain the employee on the plan and will recover the premiums when the employee returns to work and/or paid status.
    - 3) Yakima County has a current cap of \$500.00 that an employee may accrue in arrears. Once the

employee hits this cap, the employee will be notified by Human Resources in writing that they will need to pay the balance off or make arrangements to pay the balance down, or insurance may be canceled. Alternative, While an employee is in leave without pay status, the employee must continue to make this payment, either in person or by mail or by arrears collection via the payroll process. Payments made outside of the payroll process must be received in the Human Resources Office by the 20th day of each month for coverage to be effective for the following month. If the payment is more than 30 (thirty) days late, the employee's health care coverage may be suspended for the duration of the leave.

3. Benefits provided by the County are subject to status coverage maximums and eligibility requirements as indicated by each individual insurance carrier. Employee's entitlement to continue coverage at group rates varies based on type of coverage purchased and length of unpaid leave.

## **VI. Employee Status After Leave & Job Restoration**

1. An employee on FMLA leave has the right to be restored by Yakima County to the position the employee held when the leave commenced, or to a position with equivalent employment benefits, pay and other terms and conditions of employment upon return, subject to limitations contained in the FMLA.
2. Nothing in this policy shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave or any right, benefit, or position of employment other than any right, benefit or position to which the employee would have been entitled had the employee not taken the leave.
3. An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. If an employee is laid off during the course of taking FMLA leave and employment is terminated, Yakima County is not required to continue FMLA leave or maintain group health plan benefits provided that there are no continuing obligations under a collective bargaining agreement or other policy.

## **VII. Use of Paid Time Off and Leave Without Pay**

1. Employees may use their available paid time off, including Paid Time Off (PTO), Annual Leave (vacation), personal/floating holidays, Compensatory Time, and sick leave where applicable, including WA Paid Sick Leave (WPSL), Extended Sick Leave (ESL) or Sick Leave (SL), during any period of family or medical leave.
2. Refer to HR-029 Yakima County WA State Paid Sick Leave Policy and HR-012 Yakima County Leave of Absence Policy.

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

1. FMLA leave may be taken intermittently (i.e., periodic absences for ongoing medical treatment, or manage flare-ups of a chronic condition), or under certain circumstances, may be used as a reduced work schedule.

2. In all cases, the family or medical leave may not exceed a total of 12 weeks (26 weeks in the case of Military Caregiver Leave) over the applicable 12-month period.
3. The Department Head/Elected Official, to meet the department's needs, may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

## **IX. Certification of a Serious Health Condition**

### **1. Health Care Provider Verification**

A. Yakima County may require an employee to provide certification of a serious health condition from a health care provider. An 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. Medical certification forms are available in the Human Resources Department and the County intranet / YCShare.

B. **Initial Certification** of a serious condition must include the following:

- 1) Contact information for the health care provider, including name, address, telephone number, fax number, and type of medical practice/specialty;
- 2) The date when the serious health condition began;
- 3) How long its expected duration, diagnosis, and
- 4) If the employee is a patient, whether the employee is unable to work and the likely duration of this inability;
- 5) If a family member is the patient, whether the that the family member need care, and an estimate of the frequency and duration of the leave required to care for the family member.

C. Yakima County will provide the employee with seven calendar days to correct any deficiency in the certification. An employee may be denied, or lose FMLA protection if his or her medical certification is incomplete or insufficient.

D. **Intermittent / Reduced Schedule:** The County may require additional certification of the medical need for a reduced or intermittent leave schedule. The certification must include a statement describing the schedule needed, the dates and duration of the need for the schedule, and treatment or other reason for the schedule. Yakima County has the right to require periodic medical re-certification for absences related to a serious health condition which continues for more than 30 (thirty) days.

E. **Second and Third Opinions:** Yakima County has the right to ask for a second opinion at the employer's expense if it has reason to doubt the validity of the certification (Title 29 CFR 825.307).

F. **Annual Medical Certification:** Where the need for leave exceeds last beyond a single leave year, Yakima County requires a new certification for each subsequent FMLA year. Annual medical certifications are subject to Second and Third opinions as well as authentication by the health care provider.

## 2. Certification of Qualifying Exigency Leave

A. Yakima County may require the following information and documentation:

- 1) A copy of the military member's active duty orders (or other official military documentation), indicating the call to covered active duty and expected dates of covered active duty service. In addition, the County may contact the appropriate Department of Defense unit to verify the service member's orders. This documentation will be required only once for each service member's call to service. However, such documentation may be requested again for a different covered active duty call-up or the call-up of a different service member.
- 2) A statement or description of the appropriate facts regarding the qualifying exigency;
- 3) The approximate date on which the leave began (or will begin), and how long /often the need will be needed and
- 4) The contact information for any meeting with a third party and a brief description of the purpose of the meeting.

## 3. Certification of Military Caregiver Leave

A. Yakima County may require certification to be completed by a Department of Defense health care provider, a Veterans Affairs health care provider, a Department of Defense non-network TRICARE authorized private health care provider or a health care provider who is not affiliated with DOD, VA, or TRICARE.

B. The certification shall include the name of the covered service member and the relationship of the service member to the employee, the appropriate military status of the service member, the appropriate contact information of the health care provider, a statement or description of the appropriate medical facts regarding the service member's health condition sufficient to support the need for leave, a description of the care to be provided and an estimate of the leave time needed (continuous vs intermittent, beginning and ending dates, duration of leave, etc).

C. As with other types of FMLA leave, it is the employee's responsibility to provide complete and sufficient certification. Failure to do so may result in the denial of leave.

## **X. Procedure for Requesting Leave**

1. All employees requesting leave under this policy must submit a request to their Department Head/Elected Official (or designee) or Human Resources. If an employee does not comply with the

notice provisions for requesting leave and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

2. **Foreseeable FMLA Leave:** When an employee plans to take foreseeable leave under this policy, the employee must give Yakima County Human Resources Department at least (30) thirty days notice. Such notice must be in writing and set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. County FMLA request forms are available in Human Resources. If it is not possible to give (30) thirty days notice, an employee must give notice as soon as practicable. “As soon as practicable” means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case.
  - A. An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to the department operations. If the employee fails to consult with the Department Head / Elected Official or designee to attempt to minimize the workplace disruption, the Department Head / Elected Official or designee may initiate discussions with the employee and require the employee to attempt to make less disruptive arrangements, subject to the approval of the health care provider.
3. **Unforeseeable FMLA Leave:** When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the Department Head / Elected Official or designee as soon as practicable under the facts and circumstances of the particular case.
  - A. Notice may be given by the employee’s spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to do so.
4. **Extension of FMLA Leave:** If an employee’s health care provider determines that a period of leave must be extended beyond the date originally identified, the County may require notice of the new circumstances. Moreover, the County may request status reports when circumstances change, and may request subsequent medical certifications if it has reason to question the appropriateness of the leave or its duration.