

SECTION 301: FAMILY AND MEDICAL LEAVE ACT

301.1 POLICY: Black Hawk County is committed to complying with all applicable provisions of the federal Family and Medical Leave Act of 1993 (FMLA), as amended, which allows “eligible” employees to take job-protected unpaid leave (or to substitute appropriate paid leave if the employee has earned or accrued it), for up to a total of 12 workweeks in a designated 12-month period for any qualifying FMLA reason(s) identified in Section 301.4 below, or up to a total of 26 workweeks in a single 12-month period to care for a covered service member in accordance with Section 301.5 below. Except for leave to care for a covered service member with a serious injury or illness, Black Hawk County will use a “rolling” 12-month period measured backward from the date of any FMLA leave usage for FMLA calculation purposes. An employee on FMLA leave is also entitled to have health benefits maintained as if the employee had continued to work instead of taking FMLA leave as long as the employee continues to pay his/her share of the premiums during the leave period. At the conclusion of the leave, subject to some exceptions, an employee generally has a right to return to the same position or to an equivalent position with equivalent pay, benefits, and working conditions.

301.2 SCOPE: This policy applies to all Black Hawk County employees, except for elected officials, and employees who have been employed by the County for less than 12 months or who have worked less than 1,250 hours under the principles of the Fair Labor Standards Act (FLSA) during the 12-month period immediately preceding the commencement of the leave.

301.3 FMLA COMPLIANCE: This policy is intended to comply with the Family and Medical Leave Act of 1993 at 29 C.F.R. Part 825, as amended by the Support for Injured Service Members Act of 2008 and the Department of Labor’s rules effective January 16, 2009. Whenever the provisions of this policy are in conflict with federal or state laws or regulations, the provisions of the laws or regulations shall prevail. In the event a collective bargaining agreement between the County and a certified bargaining unit includes provisions related to application of the FMLA, the contract provisions shall be followed unless they are in conflict with federal or state laws or regulations.

301.4 LEAVE ENTITLEMENT PERIOD: Except in the case of leave to care for a covered service member with a serious injury or illness, an eligible employee’s FMLA leave entitlement is limited to a total of 12 workweeks of leave, within a “rolling” 12-month period measured backward from the date of any FMLA leave usage.

301.5 LIMITATIONS ON FMLA LEAVE: Leave to care for a newborn or for newly placed child must conclude within 12 months after the date of the birth or placement of the child. An eligible employee may only use intermittent or reduced schedule leave after the birth to be with a healthy newborn child if the Department Head agrees to such arrangement. See §825.120(b).

301.6 EMPLOYEE NOTICE REQUIREMENTS: An employee shall provide sufficient information, such as the reason for an absence and the anticipated duration of the absence, for an employer to reasonably determine whether the FMLA may apply to the leave request. The employee is also expected to comply with his/her department's usual and customary notice and procedural requirements for requesting leave. If an employee does not comply with the department's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

301.6 CERTIFICATION: The employer may require that an employee's leave to care for a covered family member with a serious health condition, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's family member. The employer may also require that an employee's leave because of a qualifying exigency or to care for a covered service member with a serious injury or illness be supported by a certification, as described in §825.309 and §825.310, respectively.

301.7 WHILE ON LEAVE: While on an FMLA leave, the employee may be required to provide his/her employer with periodic reports regarding his/her leave status and intent to return to work. The need for these reports and the frequency of any required reports will be identified in the *Notice of Eligibility and Rights & Responsibilities* form provided by the employer to the employee.

If the circumstances of the employee's leave changes and the employee is able to return to work earlier than the date originally anticipated, the employee may be required to notify his/her employer at least two workdays prior to the date he/she intends to report for work.

While on approved intermittent leave, it is the employees' responsibility to assert they are using their FMLA when calling in sick.

301.8 FITNESS-FOR-DUTY CERTIFICATION: Prior to an employee's return to work from an FMLA leave for his/her own serious health condition, the employee may be required to provide a fitness-for-duty certification with regard to the particular health condition that caused the employee's need for FMLA leave.

301.9 FAILURE TO RETURN TO WORK: The failure of an employee to return to work upon expiration of FMLA leave will be considered a voluntary resignation unless the employee requests and receives an additional non-FMLA leave of absence from his/her Department Head.

301.10 SUBSTITUTION OF PAID LEAVE: Generally, FMLA leave is unpaid leave. However, under §825.207, FMLA permits an eligible employee to choose to substitute

accrued paid leave for FMLA leave. If an employee does not choose to substitute accrued paid leave, the employer may require the employee to substitute accrued paid leave for unpaid FMLA leave. The term “substitute” means that the paid leave provided by the employer, and accrued pursuant to established policies of the employer, will run concurrently with the unpaid FMLA leave. Accordingly, the employee receives pay pursuant to the employer’s applicable paid leave policy during the period of otherwise unpaid FMLA leave.

It is the County’s policy that unless otherwise provided for in an applicable collective bargaining agreement, a Department Head may require employees to substitute applicable accrued paid leave for unpaid FMLA leave. If the Department Head does not require employees to substitute applicable paid leave, an eligible employee may choose to substitute applicable accrued paid leave for unpaid FMLA leave.

301.11 GROUP HEALTH PLAN BENEFITS: During an FMLA leave, an employee is entitled to continued group health plan coverage under the same conditions as if the employee continued to work. To the extent that an employee’s FMLA leave is paid, the employee’s portion of health insurance premiums will be deducted from the employee’s earnings. If FMLA leave is unpaid, the employee’s portion of health insurance premiums must be paid in accordance with the County’s rules for leave without pay. The employee will have a 30-day grace period in which to make premium payments. If payment is not made timely, the employee’s group health insurance may be cancelled upon a minimum of 15 days’ written notice to the employee that health care coverage will lapse. See §825.209, §825.210 and §825.212.

301.12 BENEFIT ACCRUALS: During an unpaid FMLA leave, an employee shall not be eligible for holiday pay, or to accrue vacation, sick leave, or other fringe benefits. For purposes of pension or retirement plans, FMLA leave periods are counted as continued service for vesting and eligibility determinations. When the employee returns to work from an unpaid FMLA leave, his/her benefits will be resumed in the same manner and at the same levels as provided when the leave began, subject to any changes in benefit levels that may have taken place during the period of FMLA leave.