

**MONTGOMERY COUNTY, TEXAS  
EMPLOYEE POLICY MANUAL  
4. BENEFITS AND LEAVE**

**4.7 FAMILY LEAVE**

**FAMILY AND  
MEDICAL LEAVE  
ACT**

4.7-1 All eligible employees of Montgomery County are entitled to the protection offered by the Family and Medical Leave Act of 1993 (FMLA). All employees with a possible FMLA event must contact Human Resources. Included in the Act is the requirement that during any 12-month period (specified by Montgomery County as a “rolling” 12-month period measured backward from the date an employee uses any FMLA leave) employers provide eligible employees up to 12 weeks (480 work hours) of leave (paid or unpaid) for:

1. the birth, adoption or placement in foster care of a child;
2. to care for a son, daughter, spouse or parent with a serious health condition;
3. for the employee’s own serious health condition;
4. for an exigency caused by a family member who belongs to the regular Armed Forces being called for deployment to a foreign country, or a member of the reserves or National Guard being called to active duty deployment to a foreign country; or
5. For Military caregiver leave to care for a spouse, child, parent or next of kin who is a service member and is injured or becomes seriously ill while on active duty or within five years of leaving the Armed Forces. This military caregiver leave may extend up to 26 weeks in a single 12-month period for an employee to care for a spouse, son, daughter, parent or next-of-kin covered service member with a serious illness or injury incurred in the line of duty on active duty.” Next-of-kin” is defined as the closest blood relative of the injured or recovering service member.

As allowed by law, Montgomery County requires employees to use accrued leave balances before going to an unpaid status; time spent on paid and unpaid leave is combined and counts toward the 12-week entitlement.

4.7-2 In all cases, persons who have been employed by Montgomery County (on a full or part time basis), for a total of 12 months (need not be continuous service – Sec 825.110b) (employment periods prior to a break in service of seven years or more need not be counted in determining whether the employee has been employed by the employer for at least 12 months) and physically worked at least 1,250 hours (not including vacation, sick, compensatory, personal time, etc.) for the County during the 12 month period immediately preceding the commencement of the leave, are eligible for FMLA benefits if they meet one of the five conditions listed in 4.7-1. If the leave is related to a serious health condition, the necessity of the leave must be certified as qualifying by a health care provider. Leave provisions apply equally to male and female employees.

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4.7-3 Per Federal Regulation (29 CFR 825.301), it is the employer's responsibility to designate leave as FMLA qualifying and to give notice of this designation to the employee. In any circumstance where the employer does not have sufficient information about the reason for an employee's use of leave, the Human Resources Department should inquire further of the employee or his or her spokesperson to determine whether leave is potentially FMLA-qualifying.

4.7-4 Whether or not the benefits provided under this policy are extended to an employee not meeting the length of service requirements specified in 4.7-2 is at the discretion of the elected official or department head and will be based on the needs of the department. In no event will an employee be granted employee benefits to which he would not normally be entitled.

**DEFINITION**

4.7-5 Under the FMLA, a "**serious health condition**" is defined as an illness, injury, impairment, or physical or mental condition that involves:

- A. **Inpatient care** (i.e. an overnight stay) in a hospital, hospice or residential medical care facility, including any period of incapacity (defined as an inability to work, attend school or perform other regular daily activities), or any subsequent treatment in connection with such inpatient care; or
- B. **Continuing treatment** by a health care provider, which includes:
  - 1. A period of incapacity of **more than three consecutive calendar days**, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - a. Treatment two or more times by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (such as a physical therapist) on referral by a health care provider; or
    - b. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment.
  - 2. A period of incapacity due to **pregnancy**, or for prenatal care.
  - 3. A period of incapacity or treatment for a "**chronic**" serious health condition which requires periodic visits for treatment by a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy).

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4. A period of incapacity which is **permanent or long-term** due to a condition for which treatment may not be effective. The employee or family member need not be receiving active treatment by a health care provider (e.g., Alzheimer's disease, severe stroke, terminal cancer).
5. A period of absence to receive **multiple treatments** for an injury or condition which would result in incapacity of more than three days if not treated (e.g., chemotherapy or radiation for cancer, physical therapy for severe arthritis, or dialysis for kidney disease).

FMLA regulations provide that "treatments" for serious health conditions include examinations to determine if a serious health condition exists but not routine physical, dental, or eye examinations. A "regimen of continuing treatment" includes a course of prescription medication such as antibiotics but not taking over-the-counter medications, getting bed rest, drinking fluids, exercising or other activities that could be initiated without visiting a health care provider. Voluntary or cosmetic treatments that are not medically necessary are not "serious health conditions" unless inpatient care is required or complications arise.

4.7-6 Under FMLA a "**son or daughter**" is defined as a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under 18 years of age or older and "incapable of self-care because of a mental or physical disability" at the time FMLA leave is to commence. FMLA regulations provide separate definitions of "son and daughter" for Military Family Leave provisions that are not restricted by age.

4.7-7 Under the FMLA a "**spouse**" is defined as a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the State in which the marriage was entered into or in the case of a marriage entered into outside of the State, if the marriage is valid in the place where entered into (Place of celebration) and could have been entered into in at least one State. This definition includes an individual in a common law marriage that either: (1) was entered into in a State that recognizes such marriages; or (2) if entered into outside of the State, is valid in the place where entered into and could have been entered into in at least one State.

4.7-8 Under the FMLA a "**parent**" is defined as a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents "in law".

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<b>ADMINISTRATOR</b>	4.7-9 The Human Resources Director is the Administrator of the County's FMLA policy.
<b>BEGINNING DATE AND REQUEST FOR LEAVE</b>	4.7-10 Leave taken under this policy will begin on the first day of absence and must be requested by the employee on a Human Resources Request for Leave form at least 30 days in advance of the need for leave, if possible, or within 1 or 2 days after the need for leave is known. An employee requesting leave for planned medical treatment must consult with his department head to work out a treatment schedule that best meets the needs of both employer and employee, subject to the approval of the health care provider.
<b>POSSIBLE DELAY</b>	4.7-11 If an employee fails to give 30 days' notice of foreseeable leave and has no reasonable excuse, it may delay the start of FMLA leave until at least 30 days after the notice is given.
<b>REQUIRED PAPERWORK</b>	4.7-12 If the FMLA leave is related to a serious health condition, a completed "Certification of Health Care Provider" form must be sent to the Administrator before FMLA leave will be approved. Only when there is no advance notice of the need for leave (e.g., heart attack, stroke) may leave be approved prior to receipt of the completed certification. The County may require that a second opinion be obtained at the County's expense. In the event of conflicting opinions, the County may pay for a third and final provider to offer a binding decision.
<b>PERIODIC UPDATES</b>	4.7-13 Except for leaves due to the birth, adoption, or placement of a child, leaves under this policy that are longer than 30 days will require periodic updates from the employee's treating physician if (1) no definite date was indicated on the original Certification of Health Care Provider as the employee's date to return to work, or (2) the employee's health care provider recommends that the leave be extended for an additional length of time. Failure to submit required updates to the FMLA Administrator may result in the employee's discontinued entitlement to leave.
<b>PRIVACY</b>	4.7-14 Elected officials and department heads are not entitled to view or copy the completed "Certification of Health Care Provider" form but will be consulted about the need for and scheduling of time off. All FMLA related documentation should be submitted by the employee or doctor's office directly to the Human Resources Department and should be marked confidential due to HIPAA privacy rights (patient confidentiality). No medical files should be kept by any department other than Risk Management for the purposes of administering workers compensation claim files and/or those classes of users of Protected Health Information (P.H.I.) as allowable under the Montgomery County Employee Benefit Plan Health Insurance Portability and Accountability Act of 1996 (H.I.P.P.A.) Policy (see Section IX – Classes of Users of Protected Health Information).

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**INTERMITTENT  
LEAVE**

4.7-15 Leave may be taken on an intermittent or reduced basis for the birth or adoption of a child if the arrangement is agreed to by the department head. Leave for serious health conditions, either of a family member (as defined in this policy) or the employee may be taken intermittently or on a reduced schedule if medically necessary. The employee must attempt to schedule intermittent leave at a time that is least disruptive to the department, if possible. Employees must abide by their departmental call-in policy while on intermittent leave.

**REQUEST OF  
BOTH SPOUSES**

4.7-16 In cases where both spouses work in the same department for Montgomery County and both wish to take leave to care for a newly arrived child, their aggregate leave may be limited to 12 weeks of leave. Depending on the needs of the department, additional time may be allowed, at the department heads discretion, but the total leave under FMLA for each parent is not to exceed 12 weeks. If the leave is requested because of the illness of a child or the spouse, each spouse is entitled to up to 12 weeks of leave, if necessary.

**CHARGING  
ACCRUED TIME**

4.7-17 Time off caused by events qualifying under the FMLA should be coded to FMLA payroll codes as follows:

- A. Code 050 if using sick leave (should be used first.)
- B. Code 051 if using personal leave
- C. Code 052 if using comp time
- D. Code 053 if using holiday leave
- E. Code 054 if using vacation
- F. Code 055 if employee is on an unpaid status
- G. Code 028 if being paid with time from the sick leave pool

**See Sick Leave Pool Policy 4.15 for requirements regarding withdrawing funds from the Sick Leave Pool.**

**PAYROLL  
CHANGE FORM**

4.7-18 Once an employee has used all accrued leave balances, the department head should submit a completed Payroll Change Request Form to the Auditor's Department requesting that the employee be placed on unpaid FMLA leave effective the day that leave accruals have been exhausted. When the employee is released to return to work, another payroll change request must be submitted returning the employee from unpaid FMLA, making it effective the date of return.

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**RETURN TO  
WORK**

4.7-19 Employees whose leave was based on their own serious health condition must provide a doctor's release stating that they are able to return to work, and the FMLA requires the employee be returned to the same job or one that is nearly identical. If the employee is not returned to the exact same job, the new position must: 1) involve the same or substantially similar duties, responsibilities, and status; 2) include the same general level of skill, effort, responsibility, and authority; 3) offer identical pay, including equivalent premium pay, overtime, and bonus opportunities; 4) offer identical benefits (such as life insurance, health insurance, sick leave, vacation, etc.; and 5) offer the same general work schedule and be at the same (or a nearby) location. If an employee exhausts FMLA leave entitlement and is unable to return to work, the employer is not required to restore the employee to his or her position. If an employee is restricted in performing any of the essential functions of his or her job, those restrictions must be specifically stated; it will be the department head's decision as to whether or not the restrictions are so limiting that they prevent the employee from doing his or her job within the department. (If the illness or injury that caused the absence has resulted in a permanent disability please call the Human Resources Director for guidance.)

**RETURN TO  
WORK**

4.7-20 Employees returning from FMLA for a family member must submit written notice to the Human Resources Department stating the effective date they no longer need FMLA. This notice should be submitted by the employee on the employee's first day back at work, or as soon as possible thereafter.

**MAXIMUM  
LENGTH OF  
LEAVE**

4.7-21 No employee is guaranteed that his job will be held open for any period of time unless he is entitled to and files for leave under the Family and Medical Leave Act, in which case he will be entitled to up to 12 weeks (480 work hours) of leave, after which time the employee may be terminated if he is still unable to perform the essential functions of the same or nearly identical position, with or without reasonable accommodation. The employee must provide the paperwork required under Sections 4.7-10 and 4.7-12 (as applicable) of this policy. Based on the circumstances and the needs of the department, up to 14 weeks of additional leave may be granted at the discretion of the elected official or department head; however, additional leave is not guaranteed. This additional leave is not extended FMLA. It is Leave of Absence-Extended. Once regular accruals are exhausted, Leave of Absence-Extended (payroll code 097) will be used to code the employee's time off. Employees who do not qualify for leave under the Family and Medical Leave Act are not guaranteed that their positions will be held open for any length of time beyond the number of accrued benefit hours.

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**WRITTEN  
REQUEST FOR  
EXTENSION**

4.7-22 Employees requiring leave over and above their 12-week FMLA entitlement (480 work hours) must make a specific written request to their elected official or department head for additional leave or leave may not be extended. Current documentation from the treating physician, certifying the continued need for leave, must be sent directly to the Human Resources Department (not to the employee's department or supervisor).

**CONTINUATION  
OF HEALTH/LIFE  
BENEFITS**

4.7-23 The County shall continue to pay the County paid/subsidized employee medical rate and basic group term life costs for the employee's coverage for an employee with benefits who is on FMLA. The employee must submit payment for any normal contributions to the cost of benefit elections that would have been deducted through payroll; failure to do so may result in loss of coverage. **Employees should contact Risk Management for details regarding any benefit payments due.**

**BENEFITS  
ACCRUAL**

4.7-24 Employees must be on a paid status for at least half a pay period (normally 40 hours) in order to accrue paid leave for that pay period.

**ABUSE OF  
BENEFIT**

4.7-25 Any employee found abusing this policy, e.g., falsely reporting that he has a situation that falls under the Family and Medical Leave Act when he does not, or not returning to work when he is able, is subject to discipline, up to and including discharge.

**NON-COUNTY  
EMPLOYMENT**

4.7-26 An employee on FMLA may not perform any outside employment or engage in any extra duty employment on the same calendar day(s) that they code time off work with any FMLA or Workers Compensation codes. This includes volunteer activities that would involve any restrictions that the employee's doctor may have placed on the employee as a result of his or her FMLA event. **Employees should contact Risk Management for details regarding Non-County Employment under a Workers Compensation claim.**

**WORKER  
COMPENSATION**

4.7-27 Time off work due to a job-related illness or injury will run concurrent with time to which the employee is otherwise entitled under the Family and Medical Leave Act. An approved leave of absence may be extended beyond the time to which the employee is otherwise entitled under FMLA for a County Law Enforcement Official who is injured and hospitalized or incapacitated in the course of their official duties under the provisions of the Texas Constitution Article 3, Sec 52 (e) and as approved by the Elected or Appointed Official in charge of the injured Law Enforcement Official but not exceed the provision of the Texas Constitution Article 3, Sec 52 (e).

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**PREGNANCY  
DISCRIMINATION  
ACT**

4.7-28 As outlined above, Section 4.7-1 states an employee is entitled to the protection offered by the Family and Medical Leave Act of 1993 for the birth of their child if the employee qualifies for FMLA.

The Pregnancy Discrimination Act prohibits employers from terminating employees because they are pregnant or recently gave birth to a child. The Pregnancy Discrimination Act also requires employers to give pregnant employees the same kind of leave benefits as other employees who have short term health conditions that may require leave or limited work duties. That means if employers would offer leave for employees with injuries or surgeries then it must give pregnant employees the same leave privileges as those other employees. However, the PDA does not require employers to offer leave time and if the employer would not offer other employees leave time, then it does not have to offer pregnant employees leave time. If offered leave time, employees are required to return to work once they are released as “fit for duty” by their doctor.

**ADDITIONAL  
PROVISIONS**

4.7-29 Any areas of the Family and Medical Leave Act of 1993 not specifically addressed in this policy will be administered in accordance with the legal requirements of the Act, a copy of which is on file in the Human Resources Department.