

CHAPTER 5

EMPLOYEE BENEFITS

- [Section 5.1 Policy - General](#)
- [Section 5.2 Eligibility - General](#)
- [Section 5.3 Holidays](#)
- [Section 5.4 Leave](#)
- [Section 5.5 Family and Medical Leave Act \(FMLA\)](#)
- [Section 5.6 Health Related Benefits](#)
- [Section 5.7 Retirement, Disability, and Life Insurance](#)
- [Section 5.8 Workers' Compensation \(Policy\) \(Procedures\)](#)
- [Section 5.9 Tax-Related Benefits](#)
- [Section 5.10 Employer Assisted Home Ownership Program](#)
- [Section 5.11 Optional, Employee-Paid Benefits](#)

Section 5.5 Family and Medical Leave Act (FMLA)

- A. Policy Statement - James City County policy complies with the Family and Medical Leave Act (FMLA) of 1993 (as revised January 16, 2009). The function of this policy is to provide employees with a general description of their FMLA rights. This policy summarizes the key provisions of the Act; employees should refer to the Act itself or contact Human Resources if more specific detail is needed. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. Under this policy, James City County will grant up to 12 weeks of time away from work (or up to a total of 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness incurred in the line of duty while on active duty) during a 12-month period to eligible employees. The leave taken under FMLA may be paid, unpaid or a combination of paid and unpaid leaves, depending on the circumstances of the leave and in accordance with Sections 5.4 and 5.5. A request for determination of eligible leave under FMLA may be initiated by the employee, the supervisor, or the Human Resource Department in accordance with their respective responsibilities outlined in Sections 5.5.F, 5.5.G, and 5.5.H.
- B. Eligibility - To qualify for FMLA under this policy, the employee must meet all of the following conditions:
1. The employee must have worked for the County for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive.
 2. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date the leave is requested to begin. Hours actually worked will be counted in determining the 1,250 hours; paid or unpaid time off will not be counted.
- C. Definitions
1. Day - See Section 5.4.A.3.a.
 2. Fiscal Rolling Year - ~~July 1 through June 30~~ *12 month period measured backward from the date an employee uses any FMLA leave.*
 3. In loco parentis - Acting as a temporary guardian of a child.
 4. Next of Kin - The closest blood relative of the injured or recovering service member.
 5. Parent - The biological, adoptive, step, or foster parent or other person who stands “in loco parentis” to the employee.
 6. Qualifying Exigency - 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 and
 - 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.
7. 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 “continuing treatment” test for a serious health condition under the regulations may be met through:
- a. 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,
 - b. any period of incapacity related to pregnancy or prenatal care,
 - c. any period of incapacity or treatment for a chronic serious health condition,
 - d. a period of incapacity for permanent or long-term conditions for which treatment may not be effective, or
 - e. 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.
8. Son or Daughter - A biological or adopted child or foster child, a step-child, a legal ward, or a child of a person standing “in loco parentis” who is under 18 years of age. FMLA leave may apply to a son or daughter defined in this section who is over 18 if either of the following two situations apply:
- a. The child is incapable of self-care because of mental or physical disability.
 - b. Leave is requested and approved for a qualifying exigency.
9. Spouse - A husband or wife.

10. 12-month period -
 - a. For military caregiver leave, the 12-month period begins on the first day that leave is taken and ends 12 months later.
 - b. For determining the 1,250-hour eligibility provision, the 12-month period begins 12 months prior to the start of the FMLA leave.
11. Week - The annual authorized hours of the employee's position divided by 52.

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

1. To care for a spouse, child or parent with a serious health condition.
2. The serious health condition of the employee.
3. The birth of a child and in order to care for that child.
4. The placement of a child for adoption or foster care and to care for the newly placed child.
5. Qualifying exigency leave for an employee whose spouse, son, daughter or parent is a member of the National Guard or Reserves when the covered military member either has been notified of an impending call or order to active military duty or who is already on active duty in support of a contingency operation. The leave may begin as soon as the individual receives the call-up notice.
6. Military caregiver leave (also known as covered service member leave) to care for a spouse, son, daughter, parent or next of kin who is a covered service member with a serious illness or injury incurred in the line of duty while on active duty.

E. Amount of Allowable FMLA Leave

1. Allows eligible employees to take leave from work for up to 12 work weeks of paid, unpaid or a combination of paid and unpaid leaves during a ~~fiscal~~rolling year. Each time an employee takes leave that qualifies under FMLA, the County will compute the amount of leave the employee has taken under this policy during the ~~fiscal~~preceding 12 months and subtract it from the 12 weeks of available leave. The balance remaining is the amount of FMLA leave the employee may take until the end of that ~~fiscal~~rolling year.
2. An eligible employee may take up to 12 weeks paid, unpaid or a combination of paid and unpaid leave for the birth of a child or the placement of a child for adoption or foster care, to care for a spouse, child or parent with a serious health condition, or where the employee suffers from a serious health condition. FMLA leave to bond with a child must be taken within one year of the child's birth or placement and must be taken as a continuous block of leave.
3. An eligible employee may take up to 26 weeks of military caregiver leave during a single 12-month period beginning the first day the

eligible employee takes leave, and ends 12 months after that date. During this single 12-month period, the employee may also take leave for a different eligible FMLA-related event, but the employee is entitled to a combined total of 26 workweeks of military caregiver leave and leave for any other FMLA-qualifying reason in this single 12-month period. Under this policy, up to a total of 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness incurred in the line of duty while on active duty during the 12 month period for eligible employees.

4. If a husband and wife both work for the County and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, the husband and wife may take a combined total of 12 weeks of FMLA leave during the ~~fiscal~~ *rolling* year. If a husband and wife both work for the County and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may take a combined total of 26 weeks of FMLA leave during a 12-month period.
5. An employee who uses accrued paid leave to cover some or all of the FMLA leave must take it in accordance with County policy as defined in Section 5.4.F of this policy.
6. If paid leave is used, such time will also be counted concurrently toward the 12 weeks granted under FMLA. Disability leave for the birth of a child and for an employee's own serious health condition, will be designated as FMLA.
7. Worker's Compensation injuries or illnesses will be designated as FMLA after 6 months of date of injury.
8. Employees in VRS Plan 1 or Plan 2 will be afforded an additional 14 weeks upon the completion of the original FMLA designation. This will provide employees the same benefit as those covered under the VRS Hybrid plan for short-term disability.

F. Employee Responsibilities - An eligible employee requesting time off for eligible FMLA reasons must comply with their department's usual and customary notice and procedural requirements for requesting leave. When an employee does not comply with James City County's usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed, denied, or rescheduled.

1. Employee requests FMLA paperwork from Human Resources and informs supervisor the purpose for leave. Notice should be provided 30 days in advance if leave is foreseeable. When advance notice is not possible, the employee must provide notice within 5 working days of event or as soon as practicable and must comply with the Department's absence notification procedures;
2. An employee must work with the supervisor to identify the type of County leave(s) which will be taken during the absence;

3. Provide medical certification within 15 calendar days of the request for leave if the situation necessitating the absence and anticipated duration of leave is foreseeable. Medical certification will be provided using the appropriate Department of Labor form obtainable from Human Resources or the DOL web site;
4. An employee must advise their supervisor and the Human Resource Department if leave is to be taken intermittently, or on a reduced work schedule basis;
5. An employee should contact Human Resources to make benefit payments if necessary;
6. Employees should keep their supervisor and the Human Resources informed of the status of the absence, including any change in the circumstances for which the leave is being taken, and the employee's anticipated return to work; and
7. Prior to returning to work, an employee must provide to the Human Resource Department a fitness for duty certification from their physician if the leave was taken for the employee's own serious health condition. Human Resources will notify supervisor of the return to work date and if the employee has any restrictions.

G. Supervisor Responsibility - If an employee requests leave for an eligible FMLA event, or when an employee has been absent for more than five (5) consecutive workdays for reasons which may make the employee eligible for FMLA, the supervisor must inform Human Resources of the absence so that Human Resources may inform the employee in writing, of their rights and responsibilities under FMLA.

1. Supervisor must inform Human Resources of any contact with the employee regarding the extension of FMLA leave or if the employee has been released to return to work sooner than expected.
2. Supervisor must not allow the employee to return to work until Return to Work Form has been provided to Human Resources.

H. Human Resource Responsibilities:

1. Post and provide general notice to all employees of their FMLA rights and responsibilities;
2. Upon learning of the employee's absence, notify the employee within five (5) workdays that the leave may qualify for and be designated as leave under FMLA;
3. Review the employee-submitted documentation to determine if the employee's absence qualifies under FMLA;
4. If the absence does not qualify for FMLA, confirm that in writing to the employee including the reason(s) the employee is not eligible;
5. If the absence does qualify for FMLA:
 - a. Confirm the employee's eligibility for FMLA in writing including ending date of leave;

- b. Maintain group health benefits as if the employee continued to work instead of taking leave;
- c. Notify the employee concerning the status of benefits while on leave; and
- d. Notify the employee's supervisor of the qualified FMLA absence so tracking of leave may begin.
- e. Upon completion of an employee's absence under FMLA:
 - 1) Upon receipt of the return to work authorization, notify supervisor of return to work date and any restrictions.
 - 2) Ensure the employee is returned to the same or equivalent position based upon the FMLA provisions; and
 - 3) Track the employee's remaining available time and the remaining eligible time period.

I. Recertification/Second Opinion - James City County may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the employee or the County 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 County may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with the FMLA absence. The County may provide the employee's health care provider with the employee's attendance records and ask if the need for leave is consistent with the employee's serious health condition. If the County has reason to doubt the validity of the medical certification, the County, at its own expense, may require the employee to obtain a second opinion and, if the employee's health care provider's certification and the second opinion certification conflict, a third opinion certification.

J. Additional Information - Employees seeking more detailed information may contact the Human Resource department or consult the Family and Medical Leave Act itself and/or the appropriate areas of the Department of Labor web site.