Section 11.4
Family Medical Leave Act (FMLA)

Jefferson County will comply with the Family and Medical Leave Act implementing Regulations as revised effective January 16, 2009 and any future revised regulations. Jefferson County 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. Additionally, health insurance benefits must be continued under the same terms and conditions as if the employee were not on leave, and the employee must be permitted to return to the same or an equivalent position upon returning from leave.

A. General Provisions

It is the policy of Jefferson County to grant up to 12 workweeks (or up to 26 workweeks of military caregiver leave to care for a covered service member with a serious injury or illness) of family and medical leave during any 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 (Section G).

B. Eligibility

In order 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 employer 12 months, or 52 weeks. The 12 months or 52 weeks need not have been consecutive. For eligibility purposes, an employee will be considered to have been employed for an entire workweek even if the employee was on the payroll for only part of a workweek or if the employee is on leave during the workweek.

2. The employee must have worked at least 1,250 hours during the twelve-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave will not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

C. Type of Leave Covered

In order 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 which 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 which requires continuing care by a licensed health care provider. (See *O. Definitions* #2 for definition of serious health condition.)

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition which, if left untreated, would result in a period of incapacity of more than three consecutive days 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 would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees, supervisors, or managers with questions about what illnesses are covered under this FMLA policy or under the County's sick leave policy are encouraged to consult with the Human Resources Department.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests leave as provided for in this policy, the County may designate all or some portion of the prior leave as FMLA leave, to the extent that the earlier leave meets the necessary qualifications.

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

An employee whose spouse, son, daughter, or parent either has been notified of an impending call or order to active military duty or who is already on covered active duty may take up to 12 workweeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities, and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period. Use of Sick Leave for the purpose of a Qualifying Exigency is not permitted.

6. *Military caregiver leave (also known as covered servicemember leave) to care for an ill or injured servicemember or veteran.*

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 care for that servicemember. Next of kin is defined as the closest blood relative of the injured or recovering servicemember. (See *O. Definitions* #3, #4, #5, and #6).

D. Amount of Leave

An eligible employee can take up to 12 workweeks for the FMLA circumstances (1) through (5) under this policy during any 12-month period. The County will measure the 12 month period as a rolling 12 month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the County will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 workweeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time. For example, if an employee used four workweeks of FMLA leave beginning February 1, 1994, four workweeks beginning June 1, 1994, and four workweeks beginning December 1, 1994, the employee would not be entitled to any additional leave until February 1, 1995. On February 1, 1995, the employee would be entitled to four workweeks of leave.

An eligible employee can take up to 26 workweeks for the FMLA circumstance (6) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the county 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 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, or to care for a parent (but not a parent "in-law") with a serious health condition, the husband and wife may only take a combined total of 12 workweeks of leave. For example, if each spouse took 6 workweeks of leave for the birth of a child, each could later use an additional 6 workweeks due to a personal illness or to care for a sick child or spouse. If a husband or wife both work for the county and each wishes to take leave to care for a covered injured or ill servicemember, the husband and wife may only take a combined total of 26 workweeks of leave.

E. Employee Status & Benefits During Leave

While an employee is on leave, the County 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 County may require the employee to reimburse the County the amount it paid for the employee's health insurance premium during the leave period.

Under current County policy, the employee pays a portion of the dependent health care premiums and voluntary benefit premiums such as Dental coverage, Supplemental Life Insurance, Supplemental AD&D Insurance, Long Term Disability Insurance, and Flexible Spending Accounts. 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, either in person or by mail. The employee portion of the premiums must be received in the Risk Management Office on each County payday. If payment is not received each pay date, your benefits will change to Employee Only coverage for Medical and Basic Dental and your Basic Life Insurance will remain in effect. The employer will provide 15 days' notification prior to the employee's loss of coverage.

While out on Family Medical Leave, an employee may not undertake secondary employment, including self-employment (paid or volunteer work), without notification and consent of the department head.

F. Employee Status After Leave

An employee who takes leave under this policy should provide a fitness for duty clearance from the health care provider. An employee who takes leave under this policy 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 that is virtually identical in terms of pay, benefits, and working conditions.

G. Use of Paid and Unpaid Leave

If the employee has accrued or earned paid leave, the employee must use paid leave first and take the remainder of the twelve workweeks or twenty-six workweeks (to care for an injured or ill servicemember) as unpaid leave.

An employee who is taking leave because of the employee's own serious health condition or the serious health condition of a family member/servicemember must use all paid leave in the following order: 1) sick leave, 2) compensatory time, 3) vacation and 4) personal leave, prior to being eligible for unpaid leave. All forms of paid leaves used run concurrently with FMLA leave.

Leave for the birth of a child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), 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 or military FMLA leave for a qualifying exigency must use all paid compensatory time, vacation, and personal leave prior to being eligible for unpaid leave. Use of Sick Leave for the purpose of adoption or foster care and qualifying exigency is not permitted.

H. Intermittent Leave or a Reduced Work Schedule

The employee may take FMLA leave in 12 consecutive workweeks, 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 County 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.

For the birth, adoption or foster care of a child, the County 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.

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 County 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. The County may require certification of the medical necessity as discussed in Section J.

I. Procedure for Requesting Leave

All employees requesting leave under this policy must provide verbal or written notice with an explanation of the reason(s) for the needed leave to their immediate supervisor, who will advise the Human Resources Department by completing the Employer Notice of Eligibility/Designation of Family/Medical Leave form (Attachment B). If the leave is foreseeable, the employee must provide at least 30 days' notice to the immediate supervisor and provide a written request for leave (Attachment A) and reason(s) with a copy to the Human Resources Department. 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 leave either the same day or the next business day. The employee must give as much notice as is practicable.

An employee who is to undergo planned medical treatment is required to make a reasonable effort to schedule the treatment in order to minimize disruptions to the County's operations. Failure of the employee to provide a written request for leave cannot be grounds to deny or delay the taking of FMLA leave. Written notice of the need for leave is preferred; however, verbal notice of a qualifying need will suffice.

J. Certification for the Employee's Serious Health Condition/Certification for the Family Member's Serious Health Condition (Attachment C)

The County will require certification of the serious health condition. 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. Medical certification may be provided by using the Certification of Health Care Provider Form (Attachment C). The medical certification form must be filled out sufficiently to allow the County to make a determination of the need for leave.

Certification of the serious health condition shall include: the date when the condition began, its expected duration, and a brief statement of treatment. For medical leave for the employee's own medical condition, the certification must also include a statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee's position. For a family member who is seriously ill, the certification must include a statement that the patient (the family member) requires assistance and that the employee's presence would be beneficial or desirable.

If the employee plans to take intermittent leave or work a reduced schedule, the certification must also include dates and the duration of treatment as well as a statement of medical necessity for taking intermittent leave or working a reduced schedule. For employees on intermittent or recurring leave for the same incident, a recertification is needed every six months.

The County may directly contact the employee's health care provider/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. The County will not use the employee's direct supervisor for this contact. Before the County makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the County will obtain the employee's/employee's family member's permission for clarification of individually identifiable health information.

The County has the right to ask for a second opinion if it has reason to doubt the certification. The County will pay for the employee/employee's family member to get a certification from a second doctor, which the County will select. If necessary to resolve a conflict between the original certification and the second opinion, the County will require the opinion of a third

doctor. The County may deny FMLA leave to an employee or an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. The County and the employee will mutually select the third doctor, and the County 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 and/or third opinion.

The County will verbally designate the leave as FMLA leave immediately and provide individual notice of rights and obligations to each employee requesting leave within two business days or as soon as practicable.

After the leave is requested (or the County becomes aware of the need for leave) and the employer response form is issued, the employee must provide a medical certification (Attachment C) within 15 days. All forms should then be submitted to the Human Resources Department. Also, the employee must provide the County with a medical release to return to work before they will be allowed to start working again. Forms are available at the Jefferson County Website: co.jefferson.tx.us under Human Resources.

This Family and Medical Leave policy is subject to the basic requirements of the Federal Family and Medical Leave Act (FMLA) and the regulations issued to implement it.

K. Certification of Qualifying Exigency for Military Family Leave (WH-384 Form)

The County 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. This certification will be provided using the Certification of Qualifying Exigency For Military Family Leave form (WH-384). Forms are available at the Jefferson County Website: co.jefferson.tx.us under Human Resources.

L. Certification for Serious Injury or Illness of a Current Service Member for Military Family Leave (WH-385 Form) Or Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (WH-385-V Form)

The County will require certification for the serious injury or illness of the covered service 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. This certification will be provided using the Certification for a Serious Injury or Illness of a Current Service Member for Military Family and Medical Leave form (WH-385) or by using the Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave form. (WH-385-V). Forms are available at the Jefferson County Website: co.jefferson.tx.us under Human Resources.

M. Recertifications

The 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 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 County may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with a FMLA absence.

N. Intent to Return to Work From FMLA Leave

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

O. Definitions

1. Health Care Provider: a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other person determined by the Secretary to be capable of providing health care services.

2. Serious Health Condition: a condition that requires inpatient care at a hospital, or other medical care facility or conditions that incapacitate you or your family member for more than three (3) consecutive days and requires ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication).

3. Military Leave (also known as covered servicemember): Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

   In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

   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.

d) The "next of kin of a covered servicemember" is the nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin. Alternatively, where a covered servicemember has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered servicemember's next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered servicemember pursuant to § 825.122(k).

4. "Covered Active Duty" means:
   a) *Covered active duty or call to covered active duty status* 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 (members of the National Guard and Reserves) 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.

5. Covered Servicemember:
   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.

6. Serious Injury or Illness for Covered Servicemember or Veteran:

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 the 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 – a) 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.