

Effective March 16, 1994

County of Hawaii
FAMILY AND MEDICAL LEAVE ACT POLICY

BACKGROUND

The Family and Medical Leave Act (FMLA) was enacted on February 5, 1993, predicated on two concerns--the needs of the American workforce and the development of high-performance work organizations. The intent of the FMLA is to balance the demands of the workplace with the needs of families, to promote the stability and economic security of families, and to promote national interests in preserving family integrity.

While the effective date of the Act is August 5, 1993, the Act provided that the effective date for employees covered by a collective bargaining agreement is February 5, 1994, or the expiration date of the agreement, whichever date is earlier. This means the following effective dates for employees of the County:

August 5, 1993 - Employees not covered by a collective bargaining agreement and employees of bargaining unit 01;

September 1, 1993 - Employees of bargaining units 03, 04, 11, 12 and 13;

February 5, 1994 - Employees of bargaining unit 02.

In general, the FMLA entitles qualified employees up to 12 weeks of unpaid leave each 12-month period for certain family and medical reasons. FMLA also entitles those employees reinstatement of pre-existing health coverage upon conclusion of the leave and reinstatement to the same or an equivalent position.

POLICY

The County of Hawaii will provide eligible employees up to 12 weeks of unpaid family or medical leave each calendar year. To be eligible, employees must have been employed by the County for at least 12 months and have performed a minimum of 1,250 hours of service during the 12-month period preceding the first date of the leave.

Leave may be taken for:

Birth of a child, and to care for such a child;

Placement with the employee of a son or daughter for adoption or foster care;

Care for the employee's spouse, son, daughter, or parent with a serious health condition; and

A serious health condition that makes the employee unable to perform the functions of the employee's job.

A department shall provide written guidance to an employee concerning all the employee's rights and obligations under the FMLA whenever an employee requests leave under the FMLA. Additionally, the department shall provide the employee with notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet the obligations.

An employee may elect to substitute accrued paid leaves for any period of family and medical leave (FML) except that sick leave substitution will be allowed only for an employee's own illness and as allowed under the State Family Leave law (up to a total of four weeks). The minimum amount of paid leave that an employee may elect to substitute shall be the minimum time allowed under the applicable collective bargaining unit agreement, rules and regulations or executive order. An employee who elects to substitute paid leave need only comply with the normal requirements, if any, associated with that leave.

A department shall not require an employee to substitute paid leaves for any period of FML.

An employee may take leave on an intermittent or reduced leave schedule for the serious health condition of the employee or a family member when medically necessary. In addition, an employee may take leave for other reasons on such leave schedule but only with the consent of the appointing authority. Leave on an intermittent or reduced leave schedule for a serious health condition shall be supported with a certification from the health care provider that the leave is medically necessary. The employee shall attempt to schedule the leave so that it does not disrupt the department's operations and shall provide the

department with a schedule of the leave. The department may require the employee on leave for a serious health condition to transfer temporarily to an alternative position which provides equivalent pay and benefits for the period of the leave.

Any employee who requests leave because of a serious health condition of the employee or a family member shall provide the department with a certification of illness from a health care provider. The certification shall be submitted within 15 days after the department's request, if practicable. For requests to care for an employee's seriously ill family member, certification shall include a statement that the employee is needed to care for the family member. Department may deny the taking of leave until the required certification is provided for an employee who fails to provide a medical certification within 15 days after being given notice by the department to furnish the certification unless extenuating circumstances prevent the employee from providing the certification within the 15-day time period.

The department may require the employee to obtain a second medical opinion at the department's expense if the department doubts the validity of a medical certification. The health care provider furnishing the second opinion cannot be employed on a regular basis by the County. If the opinions of the employee's and the employer's designated health care providers differ, the department may require the employee to obtain certification from a third health care provider (one designated or approved jointly by the department and the employee), again at the department's expense. The third opinion shall be final and binding.

Employees on medical leave shall obtain a fitness-for-duty certification prior to returning to work when absence is for five or more consecutive working days.

A department may limit the leave that may be taken by spouses working in the same department to a combined total of 12 workweeks during a calendar year if leave is taken for the birth of a child or placement of a child with the employee for adoption or foster care.

Entitlement to leave for the birth of a child or placement of an adopted or foster child expires 12 months after the birth of the child or placement of the adopted or foster child with the employee.

When leave is reasonably foreseeable, eligible employees must provide their department 30 days' advance notice of the leave. If 30 days' advance notice is not possible, employees must provide notice as soon as practicable. Department may delay the on-set of the leave when employees fail to provide the required advance notice.

A department shall require an employee on FML to report on the employee's status and intent to return to work when a change occurs to the employee's date of planned return. Department may deny an employee's continuation of leave for the employee's failure to provide the report.

A regular employee who has completed a period of leave shall be returned to the same position which the employee held prior to the leave or to a position equivalent in pay, benefits and other terms and conditions of employment. The employee shall retain any seniority and/or benefits accrued at the time the leave began.

A non-regular employee who has completed a period of leave shall be reinstated to the employee's former position provided the status and function of the employee's appointment and or position remained the same during the employee's absence. In the event the non-regular employee cannot be reinstated, the employee shall be terminated.

Departments shall make, keep and preserve records on family and medical leaves in accordance with section 825.500 of the interim final regulations.

The Department of Civil Service shall be responsible for promulgating and implementing procedures to carry out this policy and the provisions of the Federal Family and Medical Leave Act of 1993.

OBJECTIVES

The objectives of this policy are to:

- A. Balance the demands of the workplace with the needs of families and promote the preservation of family integrity.
- B. Comply with the requirements of the Family and Medical Leave Act.

PROHIBITED ACTS

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by the law. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

Nothing in the FMLA modifies or affects any Federal or State law prohibiting discrimination on the basis of race, religion, color, national origin, sex, age, or disability. Compliance must be with whichever statute provides the greater rights to employees.



Stephen K. Yamashiro, Mayor
County of Hawaii

Date: 3/15/94