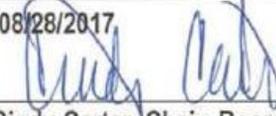


Grant County Personnel Policy

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APPROVED:  Cindy Carter, Chair, Board of County Commissioners	08-28-17 Date Signed
LAST REVISED: 10/12/2016	CONTACT: Human Resources

810 – Family & Medical Leave Act (FMLA)

810.1 Specifics: It is the policy of Grant County to grant up to twelve (12) weeks of family and medical leave during any twelve (12) month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA). The County will also grant up to twelve (12) weeks of leave for a "qualifying exigency" or up to twenty-six (26) weeks of "military caregiver" leave in accordance with the Military Family Leave provisions of the National Defense Authorization Act of 2008 which amends the FMLA. The leave may be paid, unpaid, or a combination of paid and unpaid, depending on the circumstances and as specified in this policy.

810.2 Definitions

810.2.1 Twelve (12) Month Period: Grant County uses a "rolling" twelve (12) month period, measured backward from the date of a qualifying FMLA event. Under this method of calculation, each time an employee has a qualifying FMLA event, the total leave entitlement for that occurrence would be the remainder of the twelve (12) workweeks not used during the immediately preceding twelve (12) months. In the context of Military Caregiver Leave, the single twelve (12) month period begins on the first day Military Caregiver Leave is taken and ends twelve (12) months later.

810.2.2 Spouse: A husband or wife. (Defined as recognized in the state where the employee resides.)

810.2.3 Parent: A biological parent of an employee or an individual who stands or stood *in loco parentis* to an employee when the employee was a son or daughter as defined below. This term does not include parents "in law." (Persons who are "*in loco parentis*" include those with day-to-day responsibilities to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee

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when the employee was a child. A biological or legal relationship is not necessary.

- 810.2.4 Son or daughter: 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 age 18 or age 18 or older and incapable of self-care because of a mental or physical disability. The determination of whether the adult child has a disability should be made at the time leave is to commence. In the context of Military Family Leave, the term "son or daughter" means a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing *in loco parentis*, who is of any age.
- 810.2.5 Next of Kin: A blood relative whom the service member has designated as the "next of kin". If the service member does not designate a next of kin, the order of priority other than spouse, parent, son or daughter is: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins.
- 810.2.6 Military Family Leave: Leave that is available to certain family members of military service members. There are two types of Military Family Leave:
- (a) Active Duty Leave means a period of up to twelve (12) weeks of leave which is available during a twelve (12) month period to address any qualifying exigency arising out of the fact that the spouse, parent, son or daughter of an eligible employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation. (Only families of service members in the National Guard and Reserves and certain retired members of the Armed Forces are eligible.)
 - (b) Military Caregiver Leave means a period up to a total of twenty-six (26) weeks of leave which is available during a single twelve (12) month period for the care of a covered service member with serious medical issues.
- 810.2.7 Covered Service Member: A member of the Regular Armed Forces or the National Guard or Reserves who has a serious injury or illness incurred in the line of duty on active duty that may render the member medically unfit to perform the duties of the member's military office, grade, rank or rating, and who is undergoing medical treatment, recuperation or therapy; is otherwise in military outpatient status, or otherwise on the temporary disability retired list. Service

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members who are on the permanent disability or retired list are not included.

810.2.8 Qualifying Exigency: Any one or more of the following:

- (a) Short notice deployment (seven or less calendar days prior to the date of deployment);
- (b) Military events and related activities (in advance of and during deployment, including family support or assistance programs and informational briefings);
- (c) Childcare and school activities (e.g., to arrange for alternative childcare, provide childcare on an urgent, immediate-need basis or to attend meetings at a school or daycare facility);
- (d) Financial and legal arrangements (e.g., to prepare and execute powers of attorney, enroll for military health care or to prepare a will or living trust);
- (e) Counseling (non-medical, for oneself, the service member or a child);
- (f) Rest and recuperation (up to five days for each);
- (g) Post-deployment activities (to attend ceremonies and briefings for a period of 90 days or to address issues arising from the service member's death); and
- (h) Additional activities agreed to by the employer and employee.

810.2.9 Serious Health Condition: An illness, injury, impairment, or a physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility or continuing treatment by a health care provider.

810.2.10 Health care provider: A doctor who is authorized to practice medicine or surgery (as appropriate) in the state in which the doctor practices or any other person determined to be capable of providing health care services (within the scope of their practice) including: podiatrist, dentist, clinical psychologist, optometrist, and nurse practitioner. Physician Assistants are also included in this definition but not nurses.

810.2.11 Inpatient care: An overnight stay in a hospital, hospice or residential medical facility including any period of incapacity or subsequent treatment in connection with such inpatient care.

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810.2.12 Incapacity: The inability to work, attend school or perform other regular daily activities due to the serious health condition or treatment thereafter or recovery therefrom.

810.2.13 Continuing treatment: This includes any one or more of the following:

(a) A period of incapacity of more than three consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:

- (1) Treatment by a health care provider requiring two or more office visits within 30 days of the period of incapacity.
- (2) Treatment by a health care provider for a chronic serious health condition which results in a regimen of continuing treatment under supervision of the health care provider and includes at least two office visits per year.

(2a) Any period of incapacity due to pregnancy or for prenatal care.

(2b) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition which:

- i. Requires periodic visits for treatment by a health care provider;
- ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and
- iii. May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)

(2c) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. (i.e., Alzheimer's, severe stroke, or terminal stage illness).

(2d) Any period to receive multiple treatments (including recovery therefrom) either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three

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consecutive calendar days in the absence of medical intervention or treatment such as cancer chemotherapy/ radiation, severe arthritis physical therapy, kidney disease dialysis.

810.3 Eligibility. In order to qualify to take family and medical leave under this policy, an employee must meet all of the following conditions:

810.3.1 An employee must have worked for Grant County at least twelve (12) months, or fifty-two (52) weeks. The twelve (12) months or fifty-two (52) weeks need not be consecutive, but employment prior to a seven (7) year break in service shall not qualify as time worked except for instances of military leave or approved leaves of absences. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of the week or if the employee is on leave during the week.

810.3.2 The employee must have worked at least one thousand two hundred fifty (1,250) hours during the twelve (12) month period immediately before the date when the leave would begin. This does not include paid or unpaid absences.

810.4 Procedure

810.4.1 This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences as defined in this policy as a "serious health condition" or as an active duty military related illness or injury. Employees with questions about what illnesses are covered under this FMLA policy or under Grant County's sick leave policy are encouraged to consult with the Human Resources Department.

810.4.2 If an employee takes leave for a condition that progresses into a serious health condition and the employee requests continuing leave as provided under this policy, Grant County may designate all or some portion of the earlier related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

810.4.3 If both spouses work for Grant County, their total leave in the applicable twelve (12)-month period may be limited to an aggregate of twelve (12) weeks if the leave is taken for either the birth or placement for adoption or foster care of a child. Leave for these reasons must be taken within one year of the birth or placement of the child. In the context of Military Family Leave, the aggregate amount of time both can take is limited to the combined total that each is eligible to take (*i.e.*,

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twelve (12) weeks of Active Duty Leave and/or twenty-six (26) weeks of Military Caregiver Leave).

810.5 Covered Leave: Grant County will grant FMLA leave to eligible employees for one or more of the following:

810.5.1 Because of the birth of a son or daughter of the employee, and in order to care for such son or daughter.

810.5.2 Because of the placement of a son or daughter with the employee for adoption or foster care.

810.5.3 In order to care for the spouse, or a son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health conditions.

810.5.4 Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

810.5.5 Because of any qualifying exigency arising out of the fact that the employee's spouse, parent, son, or daughter is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation.

810.5.6 In order to care for a covered service member with a qualifying serious illness or injury who is the employee's spouse, parent, son, daughter, or next of kin.

810.6 Employment Status and Benefits During Leave

810.6.1 While on approved leave of absence, the employee will continue to be responsible for the employee's share of benefit premiums. These premiums will automatically be deducted from the employee's paycheck during the approved leave. If any paycheck does not cover the employee's share of premiums, the employee will be responsible for paying the difference either in person or by mail to Human Resources.

810.6.2 Failure to pay outstanding amounts for benefits the employee elects to continue may result in cancellation of benefits. The employee will be required to meet any necessary eligibility or plan enrollment requirements upon his or her return from leave. If the employee fails to return to County employment following leave, Grant County may withhold outstanding self-pay benefit premium amounts from the employee's final paycheck.

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810.6.3 If the employee's final paycheck does not cover all outstanding self-pay benefit premium amounts, the employee is responsible for paying Grant County the amount due. The payment must be received in the Human Resources Office by the 20th day of each month for coverage to be effective for the following month. If the payment is more than thirty (30) days late, the employee's health care coverage may be suspended for the duration of the leave.

810.7 Employment Status After Leave

810.7.1 An employee on leave under this policy will be restored by Grant County to the position of employment held by the employee when the leave commenced; or be restored to an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment.

810.7.2 Nothing in this policy shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave; or any right, benefit, or position of employment other than any right, benefit or position to which the employee would have been entitled had the employee not taken the leave.

810.7.3 An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. If an employee is laid off during the course of taking FMLA leave and employment is terminated, Grant County is not required to continue FMLA leave or maintain group health plan benefits provided that there are no continuing obligations under a collective bargaining agreement or other policy.

810.8 Use of Paid Leave and Leave Without Pay

810.8.1 Employees are required to use available accrued annual leave, comp time including floating holidays during any period of family or medical leave. Employees must also use available sick leave when family or medical leave is taken because of the employee's own serious health condition or the serious health condition of a family member covered under this policy.

810.8.2 An employee must use available sick leave for any period of pregnancy related disability. Use of available annual leave, floating holidays or compensatory time is required during non-disability absences related to the birth, adoption or foster care placement of a child under this policy.

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810.8.3 If an employee needs less than a full week of FMLA leave and a holiday falls within the partial week of leave, the hours that the employee does not work on the holiday will not be counted against the employee's FMLA leave entitlement if the employee would not have otherwise been required to report for work on that day.

810.8.4 If an employee needs a full week of leave in a week with a holiday, the hours the employee does not work on the holiday will count against the employee's FMLA entitlement.

810.8.5 Paid leave as applicable must be exhausted prior to use of leave without pay unless the employee has elected unpaid leave under worker's compensation.

810.8.6 Employees are required to comply with Grant County's policies for using paid and unpaid leave.

810.9 Intermittent Leave or a Reduced Work Schedule

810.9.1 When medically necessary, the employee may take FMLA leave in twelve (12) consecutive weeks, may use the leave intermittently (take a day periodically when needed), or under certain circumstances may use the leave to reduce the workweek or workday, resulting in a reduced work hour schedule.

810.9.2 When not medically necessary, intermittent leave or a reduced schedule requires mutual agreement of the County and the employee. In all cases, the family or medical leave may not exceed a total of twelve (12) weeks (twenty-six (26) weeks in the case of Military Caregiver Leave) over the applicable twelve (12)-month period.

810.9.3 The Department Head/Elected Official, to meet the department's needs, 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.

810.9.4 It is the employee's responsibility and obligation in scheduling appointments and/or treatment to do so without disrupting the County's operations.

810.10 Certification of a Serious Health Condition

810.10.1 Grant County may require an employee to provide certification of a serious health condition from a health care provider. An employee must respond to such a request within fifteen (15) days of the request or provide a reasonable explanation for

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the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification forms are available in the Human Resources Department.

810.10.2 Certification of a serious condition must include the date when the condition began, its expected duration, diagnosis, and a brief statement of treatment. When leave is for an employee's own serious health condition, the certification must also include a statement that the employee is unable to perform the essential functions of his/her position. When leave is for the serious health condition of a family member, the certification must include a statement that the family member requires assistance. Grant County Human Resources staff may contact an employee's health care provider to clarify and/or verify the employee's medical certification, if the employee has first been given the opportunity to provide clarification and the requirements of the Health Insurance Portability and Accountability Act have been met. An employee who fails to provide consent for this contact may be denied, or lose FMLA protection if his or her medical certification is incomplete or insufficient.

810.10.3 Except in the case of Military Caregiver Leave, Grant County has the right to ask for a second opinion if it has reason to doubt the validity of the certification. Grant County will pay for the expense of the second opinion and will select the physician. If necessary to resolve a conflict between the original certification and the second opinion, Grant County will require the opinion of a third physician. Grant County and the employee will jointly select the third physician, and Grant County will pay the expense for the third opinion which will be considered final.

810.10.4 Medical certification for pregnancy leave will be required only if the pregnancy disability period is prior to or more than six weeks after the birth of the child.

810.10.5 The County may require certification of the medical need for a reduced or intermittent leave schedule. The certification must include a statement describing the schedule needed, the dates and duration of the need for the schedule, and treatment or other reason for the schedule.

810.11 Certifying and Verifying Active Duty (Qualifying Exigency) Leave

810.11.1 Grant County may require the employee to provide a copy of the service member's relative's orders or other military documentation, showing the service member's call to active duty and expected dates of active duty service. In addition, the County may contact the appropriate Department of

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Defense unit to verify the service member's orders. This documentation will be required only once for each service member's call to service. However, such documentation may be requested again for a different active duty call-up or the call-up of a different service member.

810.11.2 The County may seek certification from the employee of the reason for each qualifying exigency leave requested during the period of the relative's service. Such certification shall include the approximate dates and purpose of the absence and, if for reduced or intermittent leave, an estimate of the frequency and duration of the qualifying exigency. If there is a third party involved, the employee must provide contact information and the County may contact the third party to verify the purpose of the meeting and that the meeting is scheduled and the employee's absence is required.

810.11.3 Grant County may also require the employee to provide documentation or a signed statement of the family relationship to the service member.

810.11.4 If the employee fails to provide complete and sufficient certification and documentation, FMLA leave may be denied.

810.12 Certifying and Verifying Military Caregiver Leave

810.12.1 Grant County may require certification that the employee is needed to care for a seriously ill or injured service member. Such certification must be completed by a Department of Defense health care provider, a Veterans Affairs health care provider or a Department of Defense non-network TRICARE authorized private health care provider. In lieu of the medical certification, an employee may provide an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to the employee family member to join an ill or injured service member at his or her bedside.

810.12.2 The certification shall include the name of the covered service member and the relationship of the service member to the employee, the appropriate military status of the service member, the appropriate contact information of the health care provider, a statement or description of the appropriate medical facts regarding the service member's health condition sufficient to support the need for leave, a description of the care to be provided and an estimate of the leave time needed (continuous vs. intermittent, beginning and ending dates, duration of leave, etc.).

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810.12.3 As with other types of FMLA leave, it is the employee's responsibility to provide complete and sufficient certification and failure to do so may result in the denial of leave.

810.13 Procedure for Requesting Leave

810.13.1 Foreseeable

- (a) All employees requesting foreseeable leave under this policy must submit the request in writing to their Department Head/Elected Official (or designee). County FMLA request forms are available on the County's intranet under the Human Resources tab, FMLA. In the absence of an employee request for FMLA, the County may designate all or any portion of the period of absence as FMLA leave if circumstances indicate the absence qualifies under this policy.
- (b) When an employee plans to take foreseeable leave under this policy, the employee must give Grant County Human Resources thirty (30) days' notice. If it is not possible to give thirty (30) days' notice, an employee must give notice on the same day he or she learns of the need for leave or the next business day, absent any emergency situations. If an employee fails to provide thirty (30) days' notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least thirty (30) days from the date Grant County Human Resources receives notice. Only fourteen (14) days' notice is required for care of a terminally ill child. (This provision does not apply to Military Qualifying Exigency Leave.)
- (c) An employee undergoing planned medical treatment is required to make a reasonable effort to schedule the treatment to minimize disruptions to the department operations. If the employee fails to consult with the employer to attempt to minimize the workplace disruption, the employer may initiate discussions with the employee and require the employee to attempt to make less disruptive arrangements, subject to the approval of the health care provider.

810.13.2 Unforeseeable

- (a) Employees requesting unforeseeable leave must provide notice within the time prescribed by Grant County's usual and customary notice requirements applicable to such leave. Absent extraordinary circumstances (e.g., emergency medical treatment),

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employees may be required to follow established call-in procedures. Failure to properly notify Grant County of absences may cause a delay of FMLA protections.

- (b) If an employee's health care provider determines that a period of leave must be extended beyond the date originally identified, the County may require notice of the new circumstances. Moreover, the County may request status reports when circumstances change, and may request subsequent medical certifications if it has reason to question the appropriateness of the leave or its duration.

810.14 Fitness for Duty Certification: Grant County may request a fitness for duty certification at the time the designation notice is provided. Grant County has the right to contact the health care provider consistent with the medical certification procedures to authenticate and clarify fitness for duty statements. When a fitness for duty certification is requested, the employee must obtain the certification from his or her healthcare provider stating the employee is fit to return to work and resume the normal functions of the position. Grant County may provide the employee with a list of essential job duties together with the eligibility notice advising the employee the necessity for the fitness for duty certification. If Grant County provides such a list to the employee, it may require the healthcare provider to certify that the employee can perform the essential functions of the position. Grant County has the right to request a fitness for duty certification every thirty (30) days during intermittent leave if reasonable safety concerns exist.

810.15 Key Employee Provision: Under specific and limited circumstances where restoration of the employee to employment will cause substantial economic injury to County operations, the County may refuse to reinstate certain highly paid "key" employees after using FMLA leave. A "key" employee is a salaried "eligible" employee who is among the highest paid ten (10) percent of employees within seventy-five (75) miles of the work site.

810.16 Other Helpful Information

- 810.16.1 FMLA packets are available in the Grant County Human Resources Department. Your rights and responsibilities regarding FMLA are also posted throughout County offices and on the County intranet and internet sites.
- 810.16.2 Failure to comply with the above policy and procedures, without good cause, may result in delay, denial or termination of FMLA benefits. Please contact the Human Resources department with questions regarding FMLA leave and related issues.

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