

POLICY: Family and Medical Leave Act	DATE: 12/06/2021
SUBMITTED BY: Human Resources Jonnie J. Dorothy	REVIEWED BY: Ruth Doyle, County Administrator Board of Legislators
REGULATION(S)	The Family and Medical Leave Act of 1993 as amended CFR Title 29 Part 825

Family and Medical Leave Act

The Family and Medical Leave Act of 1993, as amended (“FMLA”), requires employers with 50 or more employees to provide eligible employees with unpaid leave. There are two types of leave available: the basic 12-week leave entitlement (“Basic FMLA Leave”), as well as the military family leave entitlements (“Qualifying Exigency Leave” and “Military Caregiver Leave”) described in this policy.

Eligibility for FMLA Leave

Employees are eligible for FMLA leave if they have worked for St. Lawrence County (SLC) for at least 12 months (the 12 months need not be consecutive) and have worked at least 1,250 hours during the 12-month period before commencement of the leave (hours paid but not worked ex. vacation, sick, etc. and unpaid leave will not be counted in determining the 1,250 hours of service).

Basic FMLA Leave

Employees who meet the eligibility requirements described above are eligible to take up to 12 weeks of unpaid leave during any 12-month period for any of the following reasons:

- The birth of the employee’s son or daughter and/or to care for the child during the first 12 months following birth;
- The placement of a son or daughter with the employee for adoption or foster care and/or to care for the child during the first 12 months following placement;
- To care for an employee’s spouse, son, daughter, or parent who has a serious health condition; or
- For a serious health condition that makes the employee unable to perform his/her job, including incapacity due to the employee’s pregnancy, prenatal medical or child birth.

The relevant 12-month period used to determine eligibility for Basic FMLA Leave will be calculated on a calendar year basis.

When both spouses are both employed by SLC, they are limited to a combined total of 12 weeks of leave during any 12-month period if the leave is taken:

- For the birth of the employees’ son or daughter or to care for the child after birth;
- For placement of a son or daughter with the employees for adoption or foster care, or to care for the child after placement; or
- To care for an employee’s parent with a serious health condition.

Serious Health Condition

A serious health condition is an “illness, injury, impairment, or physical or mental condition” that requires (1) inpatient care or (2) continuing treatment:

1. “Inpatient Care” is an overnight stay in a hospital, hospice, or residential medical-care facility and any resulting period of incapacity or treatment.
2. “Continuing treatment” is defined as one of the following:
 - a period of incapacity of more than 3 consecutive calendar days and (i) treatment 2 or more times by a health care provider within 30 days of the first day of incapacity (unless extenuating circumstances exist); or (ii) treatment by a health care provider which results in a regimen of continuing treatment;
 - The first treatment visit must take place within 7 days of the first day of incapacity.
 - Treatment by a health care provider also requires an in-person visit to the health care provider.
 - a period of incapacity due to pregnancy or for prenatal care;
 - a period of incapacity or treatment for a chronic serious health condition which requires periodic visits for treatment (at least 2 visits per year) by a health care provider;
 - a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective; or
 - a period of absence to receive multiple treatments for (i) restorative surgery after an accident or injury or (ii) an injury or condition which would result in incapacity of more than 3 consecutive calendar days if left untreated.

Ordinarily, unless complications arise, the common cold, flu, ear aches, upset stomach, ulcers, headaches other than migraines, routine dental problems, etc. do not qualify as serious health conditions. In addition, routine medical examinations are not considered serious health conditions, and neither are voluntary cosmetic treatments, unless inpatient care is required or complications develop.

The terms spouse, parent, son and daughter are defined in accordance with the FMLA. If you have any questions regarding these definitions, please contact the Human Resources Department.

Military Family Leave

There are two types of Military Family Leave available: Qualifying Exigency Leave and Covered Servicemember Leave.

Qualifying Exigency Leave – Employees meeting the eligibility requirements may be entitled to use up to 12 weeks of their Basic FMLA Leave entitlement to address certain qualifying exigencies.

Leave may be used if the employee’s spouse, son, daughter, or parent (the “military member”) is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces. The term “covered active duty” is defined in accordance with the FMLA. If you have any questions about what constitutes a “covered active duty,” please contact the Human Resources Department.

Qualifying exigencies may include:

- Short-notice deployment (up to 7 days of leave);
- Attending certain military events and related activities;
- Arranging for alternative childcare and attending certain school meetings;
- Addressing certain financial and legal arrangements;
- Spending time with a covered servicemember who is on short-term rest and recuperation leave (up to 15 calendar days of leave);
- Caring for a military member’s parent who is incapable of self-care, when such care is necessitated by the member’s covered active duty (*i.e.*, arranging for alternative care, providing care on an immediate need basis, admitting or transferring the parent to a care facility, attending meetings with staff at a care facility, etc.);

- Attending certain counseling sessions;
- Attending post-deployment activities that occur up to 90 days after the termination of the covered servicemember's active duty status or to address that arise from the death of a covered servicemember while on (covered) active duty status; and
- Other activities arising out of the servicemember's active duty or call to (covered) active duty status which are agreed upon by SLC and the employee.

The relevant 12-month period used to determine eligibility for Qualifying Exigency Leave will be calculated on a calendar year basis.

Covered Servicemember Leave (a.k.a. "Military Caregiver Leave") – There is also a special leave entitlement that permits employees who meet the eligibility requirements for FMLA leave to take up to 26 weeks of unpaid leave during a single 12-month period to care for an immediate family member (spouse, child, parent) or next of kin (nearest blood relative) who is a covered servicemember.

A "covered servicemember," as it applies to this form of leave, is: (1) a current 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 (2) a covered veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness. The terms "covered veteran" and "serious injury or illness" are defined in accordance with the FMLA. If you have any questions about what constitutes a "covered veteran" or a "serious injury or illness," please contact the Human Resources Department.

The 12-month period for Covered Servicemember Leave is defined as the 12-month period measured *forward* from the date an employee's first FMLA leave to care for the covered servicemember begins. In other words, the single 12-month period begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date, regardless of the method used by SLC to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons. During this 12-month period, an eligible employee's FMLA leave entitlement is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason.

In cases where both spouses are employed by SLC, the combined total of leave taken to care for a covered servicemember may not exceed 26 weeks in a single 12-month period.

Employee's Responsibilities When Requesting FMLA Leave

If the need for leave is foreseeable, the employee must notify his/her supervisor(s) and the Human Resources Department at least 30 days before the FMLA leave begins. When 30 days notice is not possible, the employee must give notice *as soon as practicable* (or within 1 or 2 business days) of learning of the need for leave, except in extraordinary circumstances. Failure to provide such notice may be grounds for delaying the start of the FMLA leave or denying the request for leave.

If the need to use FMLA leave is not foreseeable, the employee must notify his/her supervisor(s) and the Human Resources Department as soon as practicable (or within 1 or 2 business days). Employees are expected to provide notice in accordance with this policy, as well as SLC's usual and customary notice requirements, which means that notice of the need for unforeseeable FMLA leave should ordinarily be given prior to the start of the employee's workday, absent unusual circumstances. Failure to provide such notice may be grounds for delaying the start of the FMLA leave or denying the request for leave.

The employee will be requested to fill out an FMLA medical certification form which can be obtained from the Human Resources Department. Furthermore, when submitting a request for leave, the employee must

provide sufficient information for SLC to determine if the leave might qualify for FMLA leave, and also provide information on the anticipated date when the leave would start, as well as the anticipated duration of the leave.

Employer Responsibilities

When an employee requests leave, SLC will inform the employee whether he or she is eligible for leave under the FMLA and provide the employee with written notice of his or her rights and responsibilities. SLC will also inform the employee whether the leave will be designated as FMLA-protected, and if so, provide information on the amount of leave that will be counted against the employee's 12 or 26 week entitlement.

Medical Certification

SLC will require that an employee's request for leave to care for the employee's spouse, son, daughter, or parent with a serious health condition, or due to the employee's own serious health condition that makes the employee unable to perform the functions of the employee's position, be supported by written medical certification issued by an appropriate health care provider providing the medical attention. Additionally, if an employee is requesting either Qualifying Exigency Leave or Military Caregiver Leave, the employee must also provide appropriate certification.

When the employee requests leave, SLC will notify the employee of the requirement for certification and when it is due. The employee must provide the requested certification to SLC within 15 calendar days after SLC's request, unless to do so is not practicable despite the employee's diligent, good faith efforts. Failure to provide requested certification in a timely manner may result in denial of leave until it is provided.

The employee certification must be complete and sufficient. In the event that the certification is deficient, SLC will advise the employee, in writing, what additional information is necessary to make the certification complete and sufficient. The employee will be given 7 calendar days (unless not practicable despite the employee's diligent, good faith efforts) to cure any such deficiency. If the deficiencies are not cured in the resubmitted certification, SLC may deny the taking of FMLA leave.

SLC may require verification of the need for leave by requesting that the employee obtain a second or third medical opinion. Failure to obtain the second and/or third medical opinion(s), where applicable, will result in the denial of FMLA leave. Where permissible, SLC may also require subsequent medical recertification and/or an annual certification. Failure to provide requested certification within 15 days, unless it is not practicable to do so despite the employee's diligent, good faith efforts, may result in the delay of further FMLA leave.

Intermittent Leave

Leave because of a serious health condition involving an employee or an employee's spouse, child, or parent, or either type of Military Family Leave may be granted on an intermittent basis (in separate blocks of time due to a single health condition) or on a reduced-schedule leave (reducing the number of hours worked per workweek or workday) when necessary because of the nature of the medical condition and the scheduling of medical treatments. However, leave may not be taken on an intermittent basis or on a reduced work schedule when used to bond with the employee's own child during the first year following birth, or to bond with a child placed with the employee for foster care or adoption, unless SLC agrees to such leave in writing.

When planning medical treatment, employees must consult with SLC and make reasonable efforts to schedule leave so as not to unduly disrupt SLC Department operations.

If leave is unpaid, SLC will reduce the employee's salary based on the amount of time actually taken. In addition, while an employee is taking recurring leave on an intermittent or reduced-schedule basis for *foreseeable*, planned medical treatments, SLC may temporarily transfer or assign the employee to another position or an alternative position that better accommodates the recurring leave and which has equivalent pay and benefits.

Maintenance of Health Benefits

While an employee is on leave, SLC will maintain the employee's health benefits as if the employee continued to be actively employed. Specifically, SLC will continue to pay the employer's portion of the employee's group medical premium for a period not to exceed 12 weeks. In addition, the employee will be given the opportunity to choose continuation coverage under the COBRA regulations if he/she has not returned to work at the end of the 12-week period.

If paid leave is substituted for unpaid FMLA leave, SLC will deduct the employee's portion of the group medical premium as a regular payroll deduction. If leave is unpaid, the employee will be responsible for continuing to contribute his/her portion of the premium by mailing it on a monthly basis to SLC Human Resources Department.

The employee's coverage and the coverage of all enrolled dependents will be terminated if the payment of the employee's portion of the premium is more than 30 days late. If the payment is more than 15 days late, SLC will send the employee a letter to this effect. If SLC does not receive the payment for outstanding benefit premiums within 15 days after the date of that letter, the employee's coverage will terminate for non-payment of his/her required contributions.

The employee has a five (5) day grace period to submit payment after which coverage will be discontinued if payment is not received and will result in the loss of their COBRA rights. There are no provisions for reinstating the employee's coverage after the COBRA rights have been lost.

If an employee on unpaid FMLA leave chooses not to return to work for reasons other than (1) a continued serious health condition of the employee or the employee's family member, (2) a serious injury or illness of a covered servicemember which would otherwise entitle the employee to FMLA leave, or (3) a circumstance beyond the employee's control, SLC will require the employee to reimburse it the amount it paid for the employee's health insurance premium during the leave period if applicable.

Substitution of Accrued Paid Leave

Employees on unpaid FMLA leave will not accumulate paid leave and are required to substitute all forms of available accrued paid leave for their unpaid leave. The substitution of paid leave time for unpaid leave time does not extend the 12-week leave period. Furthermore, in no case can the substitution of paid leave time for unpaid leave time result in the receipt of more than 100 percent of an employee's normal wages. An employee's FMLA leave runs concurrently with other types of leave (ex. 207C, Workers' Compensation, Disability, Extended Sick Leave, etc.) or paid time taken during the FMLA leave.

Employees who are on a leave of absence that is covered by Worker's Compensation payments will not be required to substitute accrued paid benefit time leave while receiving these payments. However, SLC and the employee may agree to have accrued paid leave supplement the disability or Workers' Compensation benefits to the extent permitted by state law. Any leave of absence taken pursuant to an applicable disability law or Workers' Compensation law will be run concurrently with FMLA leave.

Reporting While on Leave

While on leave, employees may be required to contact their Supervisor to report on their status and intent to return to work. In addition, the employee must give notice as soon as practicable, within 2 business days, if the dates of the leave change, are extended, or were unknown initially.

Return to Work at the Conclusion of FMLA Leave

Prior to the exhaustion of FMLA leave, employees will be responsible for notifying their supervisor, in writing, regarding their intention to return to work.

An employee (whose leave was occasioned by the employee's own serious health condition that made the employee unable to perform their job) will be required to present medical certification from the health care provider that he/she is able to resume work. This certification must specifically address the employee's ability to perform the essential functions of his or her job. Failure to provide such medical certification may result in delay or denial of reinstatement.

Whenever possible, employees who return at the end of the approved leave time will be restored to the position they held when the leave began. If the same position is not available, the employee will be restored to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. An exception to this policy of restoration may be made with respect to "key employees" (*i.e.*, salaried employees in the top 10% of St. Lawrence County payroll).

Fraud

An employee who fraudulently obtains FMLA leave is subject to disciplinary action, up to and including termination.

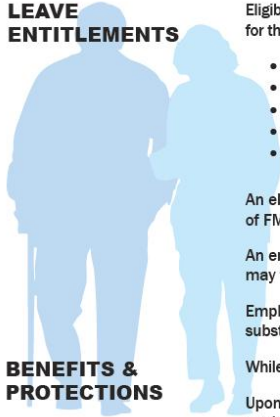
FMLA Posting

In accordance with federal law, SLC shall post a notice summarizing the provisions of the FMLA, including enforcement of the law. A copy of the notice posting is also attached to this policy.

EMPLOYEE RIGHTS UNDER THE FAMILY AND MEDICAL LEAVE ACT

THE UNITED STATES DEPARTMENT OF LABOR WAGE AND HOUR DIVISION

LEAVE ENTITLEMENTS



Eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period for the following reasons:

- The birth of a child or placement of a child for adoption or foster care;
- To bond with a child (leave must be taken within 1 year of the child's birth or placement);
- To care for the employee's spouse, child, or parent who has a qualifying serious health condition;
- For the employee's own qualifying serious health condition that makes the employee unable to perform the employee's job;
- For qualifying exigencies related to the foreign deployment of a military member who is the employee's spouse, child, or parent.

An eligible employee who is a covered servicemember's spouse, child, parent, or next of kin may also take up to 26 weeks of FMLA leave in a single 12-month period to care for the servicemember with a serious injury or illness.

An employee does not need to use leave in one block. When it is medically necessary or otherwise permitted, employees may take leave intermittently or on a reduced schedule.

Employees may choose, or an employer may require, use of accrued paid leave while taking FMLA leave. If an employee substitutes accrued paid leave for FMLA leave, the employee must comply with the employer's normal paid leave policies.

BENEFITS & PROTECTIONS

While employees are on FMLA leave, employers must continue health insurance coverage as if the employees were not on leave.

Upon return from FMLA leave, most employees must be restored to the same job or one nearly identical to it with equivalent pay, benefits, and other employment terms and conditions.

An employer may not interfere with an individual's FMLA rights or retaliate against someone for using or trying to use FMLA leave, opposing any practice made unlawful by the FMLA, or being involved in any proceeding under or related to the FMLA.

ELIGIBILITY REQUIREMENTS

An employee who works for a covered employer must meet three criteria in order to be eligible for FMLA leave. The employee must:

- Have worked for the employer for at least 12 months;
- Have at least 1,250 hours of service in the 12 months before taking leave;* and
- Work at a location where the employer has at least 50 employees within 75 miles of the employee's worksite.

*Special "hours of service" requirements apply to airline flight crew employees.

REQUESTING LEAVE

Generally, employees must give 30-days' advance notice of the need for FMLA leave. If it is not possible to give 30-days' notice, an employee must notify the employer as soon as possible and, generally, follow the employer's usual procedures.

Employees do not have to share a medical diagnosis, but must provide enough information to the employer so it can determine if the leave qualifies for FMLA protection. Sufficient information could include informing an employer that the employee is or will be unable to perform his or her job functions, that a family member cannot perform daily activities, or that hospitalization or continuing medical treatment is necessary. Employees must inform the employer if the need for leave is for a reason for which FMLA leave was previously taken or certified.

Employers can require a certification or periodic recertification supporting the need for leave. If the employer determines that the certification is incomplete, it must provide a written notice indicating what additional information is required.

EMPLOYER RESPONSIBILITIES

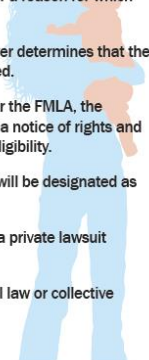
Once an employer becomes aware that an employee's need for leave is for a reason that may qualify under the FMLA, the employer must notify the employee if he or she is eligible for FMLA leave and, if eligible, must also provide a notice of rights and responsibilities under the FMLA. If the employee is not eligible, the employer must provide a reason for ineligibility.

Employers must notify its employees if leave will be designated as FMLA leave, and if so, how much leave will be designated as FMLA leave.

ENFORCEMENT

Employees may file a complaint with the U.S. Department of Labor, Wage and Hour Division, or may bring a private lawsuit against an employer.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law or collective bargaining agreement that provides greater family or medical leave rights.



For additional information or to file a complaint:

1-866-4-USWAGE

(1-866-487-9243) TTY: 1-877-889-5627

www.dol.gov/whd

U.S. Department of Labor | Wage and Hour Division

