

**LCCS POLICY 445**  
**Family & Medical Leave and Military Leave**

<b>Original Issue Date:</b>	5/26/1998
<b>Revision Dates:</b>	2/8/2000; 3/2/2004; 8/12/2009, 7/27/2012 via Contract Negotiations
<b>Revision Number:</b>	4
<b>Current Effective Date:</b>	7/27/2012
<b>Board Approval Date:</b>	
<b>Obsolete/Combined Date:</b>	
<b>Reason for Obsoleting/Combining:</b>	
<b>See new Policy #:</b>	
<b>Scope:</b>	All Lucas County Children Services Employees
<b>Responsibility:</b>	Supervisory/Management Staff
<b>Purpose:</b>	To define the Lucas County Children Services Board policy on Family and Medical Leave & Military Leave
<b>Legal Cite:</b>	Family and Medical Leave Act of 1993, <b><u>29 USC 2601 et seq., and 29 CFR 825 et seq.</u></b>

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**POLICY STATEMENT**

This policy provides a detailed summary of the rights and obligations for Family and Medical Leave and Military Leave. For a full explanation of the rights and obligations provided by law, refer to the Family and Medical Leave Act of 1993, 29 USC 2601 et seq., and 29 CFR 825 et seq.

LCCS permits employees who have been employed by Lucas County for, at least, one (1) year and for, at least, 1,250 actual hours worked during the preceding twelve (12) month period, to be eligible for Family and Medical Leave

Family and Medical Leave and Military Family Leave are limited to a maximum of twelve (12) weeks during any twelve (12) month period. The twelve (12) month period is measured forward from the date of the employee's first FMLA usage.

Family and Medical Leave may be granted for the following reasons:

- For incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, adoption or foster care placement;
- To care for the employee's spouse, minor son or daughter or parent who has a serious health condition; and
- For a serious health condition that makes the employee unable to perform the employee's job.

The Family and Medical Leave Act (FMLA) Military Leave provisions entitles eligible employees with covered family members serving in the military (Regular Armed Forces, National Guard and Reserves) to take two (2) special types of leave, Military Family Leave for qualifying exigencies and Military Caregiver Leave.

1) Military Family Leave may be granted for qualifying exigencies for the following reasons:

- To address certain qualifying exigencies for employees with a spouse, son daughter, or parent on covered active duty or has been notified of an impending call or order to covered active duty in the armed forces.
- In the case of a member in the regular component of the armed forces covered active duty means, duty during the deployment of the covered military member with the armed forces to a foreign country.
- In the case of a member of a reserve component of the armed forces covered active duty means, duty during the deployment of the covered military member of the armed forces to a foreign country in support of a contingency operation.
- Qualifying exigencies include: short-notice deployment, military events and activities related to covered active duty or call to active duty, child care and school activities, financial and legal arrangements, counseling activities (provided by someone other than a health care provider), rest and recuperation, post deployment activities and any other activity related to covered active duty or call to active duty provided that the agency and employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave.
- This leave is for non-illness related absences.

2) Military Caregiver Leave entitlement permits an employee to take up to twenty-six (26) weeks of FMLA during a single twelve (12) month period for a covered service member.

- A covered serviceman is defined as a current service member or a recent veteran with serious injuries or illnesses, including conditions that do not rise until after the veteran has left the military.
- The definition of a serious injury or illness for both current service members or veterans include serious injuries or illnesses that result from a condition that existed before the service member's active duty service and was aggravated by service in the line of duty.
- This leave is for illness related absences.

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## PROCEDURES

### GENERAL PROCEDURES

#### Conditions

- Family and Medical Leave, **Military Family Leave and Military Caregiver Leave** shall be an unpaid leave if no accumulated paid leave time is available.

- For Family and Medical Leave and Military Caregiver Leave, illness related absences, if paid leave time is available, the employee must use all of his/her available sick leave, vacation, personal leave and compensatory time off, in that order, unless otherwise designated by the employee. However, when FMLA leave is used for purposes of birth or adoption of a child, the employee will be allowed to retain one (1) week each of vacation and sick time.
- For Military Family Leave, non-illness related absences, if paid leave time is available, the employee must use all of his/her available vacation, personal leave and compensatory time off, in that order, unless otherwise designated by the employee.
- Once available paid leave time is exhausted, the remainder of the leave period will consist of unpaid leave.
- The entitlement to FMLA leave for the birth or placement of a child for adoption or foster care will expire twelve (12) months from the date of the birth or placement.
- For employees not eligible for Family and Medical Leave, Lucas County Children Services will review requests to determine eligibility for leave under the State of Ohio Revised Code.

### **Benefits Coverage during Leave**

- During a period of Family or Medical Leave, an employee will be retained on the County's health plan under the same conditions that applied before the leave commenced.
- If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse Lucas County for payment of health insurance premiums paid during the FMLA leave. Reimbursement for premiums will be waived if the reason the employee fails to return is the continuing presence of a serious health condition which prevents the employee from performing his/her job or to circumstances beyond the employee's control.
- The employee is not entitled to the accrual of any employment benefits, while on unpaid status, that would have accrued if not for the taking of leave; specifically, sick and vacation leave.
- The employee who takes FMLA leave will not lose any seniority or employment benefits that accrued before the leave began.

### **Extension of Leave following FMLA**

Employees requiring additional leave beyond twelve (12) weeks will be allowed an extended leave, provided the employee has additional sick leave accrued and a written leave request and medical certification is submitted. If an employee does not have additional sick leave accrued, an extension of leave may be considered.

### **Restoration to Employment**

Lucas County Children Services cannot guarantee that an employee will be returned to his/her original position. The employee who takes Family and Medical Leave, with the exception of those employees designated as "key employees", will be restored to a position in the same classification or to a position with equivalent pay, benefits and other

terms and conditions of employment. The determination as to whether a position is an “equivalent position” will be made by Lucas County Children Services.

**[NOTE: Collective bargaining agreements (to the extent that they apply) will be followed for those employees covered by the agreements. The terms “key employees” and “equivalent position” are applied as contemplated in the Family and Medical Leave Act.]**

### **Non-Married Domestic Partners**

This policy does not allow non-married employees leave to take care of a partner who has a serious health condition.

## **SPECIFIC PROCEDURES**

### **Notice of Leave**

The employee must provide thirty (30) days advance notice when the need for leave is “foreseeable” (such as an expected birth or because of a planned medical treatment). If the employee does not give a thirty (30) day notice for a “foreseeable” leave with no reasonable excuse for the delay, the period of delay may not be FMLA designated. For a “foreseeable” leave, where it is not possible to give as much as thirty (30) days notice, notice must be given “as soon as practicable”, usually meaning within two (2) business days of when the need for leave becomes known to the employee. Advance notice requirements shall be waived for medical emergencies.

### **Application for FMLA Leave**

The employee requesting leave must provide sufficient information, depending on the situation, for LCCS to reasonably determine whether the FMLA may apply to the leave request. The employee must also comply with LCCS procedures for use of sick leave, vacation, personal days and compensatory time off as outlined in the Employee Handbook.

### **Medical Certification of Leave**

All requests for FMLA leave must be supported by the Certification of Health Care Provider form, which can be obtained from the Human Resources Department. The employee must submit a complete and sufficient Certification of Health Care Provider form within fifteen (15) days. If LCCS deems the medical certification to be incomplete or insufficient, the employee will be provided seven (7) days to cure the deficiencies. The timeframes here will be extended if it is not practicable for the employee to obtain the completed medical certification under their particular circumstances, despite the employee's diligent, good-faith efforts to do so.

Second or third opinions may also be required at LCCS expense. LCCS may also require medical recertification every six (6) months. Failure to provide appropriate medical certification after a reasonable amount of time, usually fifteen (15) calendar days, may result in termination of FMLA leave.

Employees with chronic or long-term FMLA conditions will be required to have the “Certificate of Health Care Provider” form completed annually *or may be required every six (6) months\**, unless circumstances (listed below) warrant recertification at an earlier interval:

- Circumstances described by the previous certification have changed significantly (e.g., complications, duration/frequency of absences, pattern of absences before/after scheduled days off or longer duration of absences than specified on the certification for the most recent two (2) or more episodes of incapacity, nature/severity of illness);
- Information is received that casts reasonable doubt upon the employee’s stated reason for absence;
- The employee requests an extension of leave.

*\*If a 2nd recertification in a year is required, the Employer will reimburse the cost of the physician's fee to complete the form (if charged).*

### **Return from Leave/Failure to Return from Leave**

The ability to return to work must be supported by a "fitness for duty" medical certification when FMLA leave is taken for the employee's own health condition. If an employee wishes to return to work prior to the expiration of the approved leave, notification must be given to Human Resources, at least, two (2) working days prior to the employee’s planned return. The failure of an employee to return to work upon the expiration of a FMLA leave may result in termination of employment.

### **Extension of FMLA Leave**

An employee who wishes an extension of FMLA leave must submit a written request for an extension to Human Resources. This written request should be made prior to the expiration of the approved leave and/or as soon as the employee realizes that he/she will not be able to return at the expiration of the leave period. The extension request must be supported by medical certification.

### **Intermittent Leave**

An employee may take leave intermittently or on a reduced schedule for the birth, adoption or foster care placement of a son or daughter **only** if the employer agrees to such an arrangement.

Leave taken to care for a minor child, spouse or parent with a serious health condition, or in the case of an employee’s own serious health condition, may be taken intermittently or on a reduced leave schedule, when medically necessary. An employee may request intermittent leave for foreseeable planned medical treatments. Employees are expected to make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the employer's operations.

If any employee takes leave intermittently or on a reduced schedule, Lucas County Children Services may transfer the employee, temporarily, to an alternative position with equivalent pay and benefits in order to better accommodate recurring periods of leave.

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## CASE PRACTICE GUIDES

A “serious health condition” means an illness, injury, impairment or physical or mental condition that involves:

- **Hospital Care** – Inpatient care, including any period of incapacity or subsequent treatment in connection with such inpatient care.
- **Absence Plus Treatment** – A period of incapacity of more than three (3) full consecutive calendar days that also involves:
  - (1) an in-person treatment, at least, once within seven (7) days of first day of incapacity; and,
  - (2) either is a regimen of continuing treatment initiated by the health care professional (HCP) during first treatment or is a second in-person visit for treatment (the necessity of which is determined by HCP) within thirty (30) days of first day of incapacity.
- **Pregnancy** – Any period of incapacity due to pregnancy or prenatal care.
- **Chronic Conditions Requiring Treatments** - A chronic condition that (a) requires visits for treatment by a health care provider, at least, twice a year; (b) continues over an extended period of time (including recurring episodes of a condition); and (c) may cause episodic incapacity rather than a continuing period of incapacity.
- **Permanent/Long-Term Conditions Requiring Supervision** – Examples include Alzheimer’s, a severe stroke or the terminal stages of a disease.
- **Multiple Treatments (Non-Chronic Conditions)** – Any period of absence to receive multiple treatments. Examples include chemotherapy, radiation and dialysis.

Any questions regarding this policy should be directed to the Human Resources Department.

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## RELATED POLICIES and FORMS

Notice of Eligibility and Rights and Responsibilities (available from Human Resources Department)

Certification of Health Care Provider form (available from Human Resources Department)

Designation Notice (available from Human Resources Department)

Employee Rights and Responsibilities under FMLA Poster (available on Agency intranet)