

# Salt Lake County Human Resources Policy 4-600: Family and Medical Leave Act (FMLA)

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## **Purpose**

This policy explains the circumstances under which an employee may take time off from work for family care, medical care, covered service member care, or due to a qualifying event.

## **I. Policy**

It is the policy of Salt Lake County to provide employees with a general description of their rights under the [Family and Medical Leave Act](#) and implementing regulations. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

## **II. Procedures**

### **A. General Provisions**

1. Eligibility - To qualify for family or medical leave the employee must meet all of the following conditions:
  - a. The employee must have worked for Salt Lake County for 12 months or 52 weeks (2080 hours). The 12 months or 52 weeks (2080 hours) need not have been consecutive.
  - b. Separate periods of employment will be counted if the employee's break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service.
  - c. The employee must have worked at least 1,250 actual hours during the 12-month period immediately prior to the requested leave date.
  - d. Military Leave Eligibility is outlined in 4-600-II-A-10.
2. Type of Leave Covered - The employee must be taking leave for one of the reasons listed below:
  - a. the birth of a child and in order to care for that child.
  - b. the placement of a child for adoption or foster care and to care for the newly placed child.
  - c. the employee's serious health condition.
  - d. to care for a spouse, adult designee, child, dependent child of an adult designee or parent with a serious health condition (defined in section 3).
3. FMLA Leave and Other Leave Usage
  - a. Salt Lake County will grant up to 12 weeks (480 hours) of family and medical leave during any 12-month period after the requested leave date.
    - i. Each time an employee takes leave; Salt Lake 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 weeks of available leave. The balance remaining is the remaining amount the employee is entitled to take.
    - ii. If spouses both work for Salt Lake 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

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- a parent (but not a parent "in-law") with a serious health condition, the spouses may only take a combined total of 12 weeks of leave.
  - b. Salt Lake County will grant military caregiver leave for up to 26 weeks (1,040 hours) during any 12-month period after the requested leave date.
  - c. The leave is unpaid but may be combined with sick time for paid and unpaid leave, depending on the circumstances of the leave specified in this policy.
  - d. To the degree that the underlying condition for which the employee is receiving workers' compensation, short term disability, long term disability or using paid leave is a serious health condition, the County shall designate the employee's FMLA leave to run concurrently. The County shall designate the employee's use of parental leave to run concurrently with the employee's use of FMLA leave.
    - i. The County shall notify the employee in writing that the leave has been designated and will be counted as FMLA leave within 5 business days upon receipt of sufficient information that the leave is being taken for a FMLA-qualifying reason.
4. Serious Health Condition Defined
- a. A serious health condition is an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job or prevents the qualified family member from participating in school or other daily activities.
  - b. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition.
  - c. Other conditions may meet the definition of continuing treatment.
    - i. If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, Salt Lake County may designate all or some portion of related leave taken under this policy, to the extent that the earlier leave meets the necessary qualifications.
5. Procedure
- a. An employee may request leave without pay for a foreseeable event by submitting a completed [Certification of Health Care Provider form](#) to the administrator at least 30 days in advance of taking leave. The Certification of Health Care Provider form must contain the following:
    - i. A statement that the employee intends to take leave;
    - ii. The date leave will commence;
    - iii. The reason(s) for taking leave;
    - iv. The anticipated length of the leave; and
    - v. Whether the leave will be taken consecutively or intermittently.
  - b. An employee may take leave without pay for an unforeseeable event if verbal or other notice is given in a timely manner.

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- c. Notice may be given by the employee's spokesperson (e.g. spouse, adult designee, adult family member, or other responsible party) if the employee is unable to do so personally.
- d. An employee requesting leave due to the employee's own serious health condition or to care for the employee's immediate family member, as defined, will be required to submit a [Certification of Health Care Provider form](#) within 15 calendar days.
  - i. To determine whether the leave qualifies for FMLA, an administrator may require the employee to submit additional information to clarify the medical certification within 15 calendar days of the administrator's request.
  - ii. After the employee has provided additional information, if further clarification and authentication is needed, the administrator must contact the Human Resources Division for assistance with contacting the health care provider.
  - iii. An administrator may require the employee to provide reasonable documentation or statements verifying family relationship within 15 calendar days of the request.
  - iv. Employees will not be required to furnish medical information beyond that set out in the [Certification of Health Care Provider form](#).
  - v. An employee who fails to provide required medical documentation will not be entitled to leave under this policy.
  - vi. Employees may be required to submit periodic reports while on leave regarding their status and intent to return to work.
- e. Employees may be required to obtain a second medical opinion, at the county's expense including reimbursement for reasonable out of pocket travel expenses in accordance with Internal Revenue Service medical mileage rate guidelines.
  - i. If the first and second medical opinions differ, the employee may request a third medical opinion at the County's expense.
  - ii. The third health care provider must be approved jointly by the administrator and the employee.
  - iii. If the employee does not act in good faith in reaching agreement for the third opinion, the second medical opinion will be binding.
  - iv. If the administrator does not act in good faith in reaching agreement for the third opinion, the first medical opinion will be binding.
  - v. If both parties act in good faith, the third medical opinion will be binding.
- f. An administrator will provide written notice of an employee's eligibility for FMLA leave within five calendar days from receipt of an employee's request to take FMLA leave or upon determining the employee's leave may be for a FMLA-qualifying reason. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible.
  - i. As part of the Eligibility Notice, an administrator will provide written notice to an employee qualifying for FMLA leave detailing the specific expectations and obligations of the employee and explaining the consequences of failure to meet these obligations.

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- ii. After an administrator receives documentation of the need for leave, the administrator will notify the employee in writing within five calendar days whether the requested leave qualifies for FMLA and, if qualified, indicate the leave will be deducted from the employee's FMLA leave entitlement.
  - iii. Return to Work Certification. In cases where an employee's own serious health condition affects the ability to perform the duties of the position, an administrator may require as a condition of reinstatement, a certification that the employee is able to perform the essential functions of the job. The Designation Notice will include a list of the essential functions of the position.
  - iv. Retroactive Designation. If an administrator does not designate FMLA leave as required, the administrator may retroactively designate leave as FMLA with notice to the employee provided the failure to timely designate the leave does not harm or injure the employee. In all cases where leave would qualify for FMLA, the administrator and employee may mutually agree to retroactively designate FMLA leave.
  - v. Administrators who grant FMLA leave will document it as such in the payroll system.
  - vi. Recertification of Medical Conditions can occur in the following circumstances:
    - a. Less than 30-Day Rule. An administrator may request recertification in less than 30 days if the employee requests an extension of leave, the circumstances described by the certification have changed significantly (e.g. the duration or frequency of the absence, the nature or severity of the illness) or the administrator receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.
    - b. 30-Day Rule. An administrator may request recertification no more than every 30 days and only in connection with an employee's use of FMLA leave.
    - c. More than 30-Day Rule. If the medical certification indicates the minimum duration of the condition will be no more than 30 days, recertification cannot be requested until the minimum duration expires. In all cases, recertification may be requested every six months in connection with an employee's absence.
    - d. Annual Medical Certification. When the need for leave exceeds a single leave year, an administrator may require the employee to provide a new medical certification in each subsequent leave year.
    - e. An administrator may provide the health care provider with a record of the employee's absence pattern and ask if the serious health condition and need for leave is consistent with such a pattern.
    - f. An employee will provide the requested recertification within 15 calendar days from receipt of the request.
    - g. No second or third opinion may be required on recertification.
6. Intermittent or Reduced Schedule Leave
- a. Intermittent leave or leave on a reduced schedule is available for the care of an immediate family member, as defined, with a serious health condition or for the employee's own serious health condition. The following conditions apply:

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- i. Only the actual amount of leave taken on an intermittent or reduced schedule may be counted towards an employee's FMLA leave entitlement.
  - ii. Intermittent leave or leave on a reduced work schedule is not available for the birth or placement of a child unless approved by the administrator.
  - iii. Administrators may temporarily reassign an employee who has requested leave on an intermittent or reduced work schedule when the leave is foreseeable and for planned medical treatment including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care. The employee will receive the pay and benefits of the regular position for the hours of work performed. The employee may be reassigned to a part-time position with the same rate of pay provided the employee is not required to take more leave than is medically necessary.
7. Insurance/Benefits while on Family and Medical Care Leave
  - a. An employee on family or medical care leave who wants to maintain health, dental, 125 pre-tax cafeteria deductions or life insurance will be required to pay the same premium or cafeteria payroll deduction normally paid.
  - b. An employee who fails to submit the required premium payment will be notified in writing and given 15 calendar days after the notification before coverage is canceled.
  - c. If upon the expiration of a family or medical leave, the employee chooses not to return to work, the employee will be required to reimburse the county for premiums paid by the county.
  - d. If the employee does not return to work due to a medical circumstance that would entitle the employee to leave under FMLA the employee is not required to reimburse premiums paid by the county.
  - e. Employees who fail to return to work at the end of the leave period will be required to furnish medical certification to support the employee's claim. Employees who fail to furnish the requested information within 30 days of the request will be required to reimburse the County for insurance premiums paid during the unpaid leave.
  - f. An employee who returns to work for at least 30 calendar days is considered to have returned to work.
  - g. An employee who transfers directly from taking FMLA leave to retirement or who retires during the first 30 days after returning to work is deemed to have returned to work.
  - h. Premiums owed to the county may be deducted from any sums owed by the County to the employee.
  - i. If an employee elects to discontinue insurance coverage while on leave without pay, upon return to work, the employee may reinstate the same insurance coverage without pre-existing conditions or re-enrollment requirements.
  - j. Employees who are on leave during open enrollment will be provided with the same options as active employees.
  - k. While on leave without pay an employee is not eligible for accumulation of sick leave, vacation, or retirement benefits as provided by State law.

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8. Reinstatement from Leave
  - a. Upon return from leave without pay under the provisions of this policy, the employee will return to the former position or an equivalent position in terms of pay, benefits and working conditions within the department or elected office from which the leave was granted. An equivalent position must have substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position.
  - b. If the administrator determines the employee will not be reinstated to the former position, but to an equivalent position, written notice will be provided to the employee.
  - c. If, during the period of leave, the payroll unit where the employee worked undergoes a reduction-in-force and there is no vacant allocation to which the employee may be reinstated, normal reduction-in-force (RIF) procedures will be followed:
    - i. If the position the employee formerly encumbered was abolished during the period of leave for purposes of a RIF, the employee will be considered as having encumbered the position at the time the position was abolished.
    - ii. Upon return from leave in excess of 30 cumulative days in a twelve-month period, the employee's service date will be adjusted to reflect a reduction in service time.
      - a. The adjusted service date is used to determine the rate of vacation accrual, awards for years of service, and to calculate RIF points.
9. Exhaustion of Paid Leave Prior to the Use of Unpaid FMLA Leave
  - a. Employees are required to exhaust all paid leave balances including, but not limited to, maternity and paternity leave, personal preference day, administrative leave, compensatory time, sick leave, and vacation prior to being eligible for unpaid FMLA leave. Paid leave shall be exhausted in the following order: 1) paternal; 2) personal preference day; 3) administrative leave; 4) compensatory time; 5) sick leave; and 6) vacation.
10. Military Family Leave
  - a. Eligibility, procedures, certification intermittent leave, insurance benefits are consistent for Military Family Leave as non-military except for the following:
    - i. Qualifying event leave for families of members of the National Guard and Reserves when the covered military member is on active duty or called to active duty in support of a contingency operation.
    - ii. 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 active duty may take up to 12 weeks 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:
      - a. short-notice deployment;
      - b. military events and activities;
      - c. child care and school activities;
      - d. financial and legal arrangements;
      - e. counseling;
      - f. rest and recuperation;
      - g. post-deployment activities; or

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- h. additional activities that arise out of active duty, provided that the administrator and the employee agree, including agreement on timing and duration of the leave.
  - iii. The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is the same as other types of FMLA leave except the son or daughter does not have to be a minor (see Immediate Family (FMLA – Military Caregiver Leave). This type of leave is counted toward the employee’s 12-week maximum of FMLA leave in a 12-month period.
  - iv. Military caregiver leave (also known as covered service member leave) to care for an ill or injured service member. This leave may extend to up to 26 weeks in a single 12-month period for an employee to care for a spouse, adult designee, child of any age, a dependent child of an adult designee, parent or next of kin covered service member with a serious illness or injury incurred or exacerbated within five years of active duty in the Armed Forces. Next of kin is defined as the closest blood relative of the injured or recovering service member.
  - v. An eligible employee can take up to 26 weeks for a FMLA circumstance (military caregiver leave) during a single 12-month period. For this military caregiver leave, Salt Lake County will measure the 12-month period as a rolling 12-month period measured forward from the date leave is taken. FMLA leave taken during the 12-month period for other FMLA circumstances will be deducted from the total of 26 weeks available.
  - vi. If a husband and wife both work for Salt Lake County and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.
- b. The employee’s administrator will require certification of the qualifying event for military family leave. The employee must respond to such a request within 15 calendar 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 on the [Qualifying Event for Military Family Leave Certification form](#).
  - c. The employee’s administrator will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 calendar 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 [Serious Injury or Illness of Covered Service Member Certification of Health Care Provider form](#).

### III. References

- A. Americans with Disabilities Act of 1990, as amended
- B. Family and Medical Leave Care Act of 1993, as amended
- C. National Defense Authorization Act for FY 2008 (NDAA), Pub. L 100-181, § 585
- D. Armed Forces, Definitions, Contingency Operation, 10 U.S.C. 101(a)(13)

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- E. Human Resources Policy:
  - 1. 1-200, General Definitions
  - 2. 4-200, Leave Practices
  - 3. 4-400, Worker's Compensation

APPROVED and ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2017.

**SALT LAKE COUNTY COUNCIL**

By \_\_\_\_\_  
Steve Debry, Chair

ATTEST:

\_\_\_\_\_  
Sherrie Swensen  
County Clerk

Approved as to form and legality:

\_\_\_\_\_  
Zachary L. Lancaster  
Deputy District Attorney  
Date: \_\_\_\_\_

Voting:  
Council Member Bradley voting \_\_\_\_\_  
Council Member Bradshaw voting \_\_\_\_\_  
Council Member Burdick voting \_\_\_\_\_  
Council Member DeBry voting \_\_\_\_\_  
Council Member Granato voting \_\_\_\_\_  
Council Member Jensen voting \_\_\_\_\_  
Council Member Newton voting \_\_\_\_\_  
Council Member Snelgrove voting \_\_\_\_\_  
Council Member Wilson voting \_\_\_\_\_