

NEW CASTLE COUNTY

PERSONNEL POLICY

NUMBER	3.15
PAGE	1 of 6
DATE	06/19/12

SUBJECT: FAMILY AND MEDICAL LEAVE

APPROVED:

Valencia F. Beatty/Gm

OBJECTIVE: To outline a uniform policy to administer leave for eligible employees under the Federal Family and Medical Leave Act of 1993 (FMLA) and updates effective 2009.

STATEMENT: The FMLA provides eligible employees up to 12 weeks of unpaid, job-protected leave in a defined 12-month period for certain qualifying reasons, as defined below. The employer may substitute, or the employee may request to substitute, accrued paid leave for unpaid leave; accordingly, the substitution of paid leave is outlined below. Any time utilized, whether paid or unpaid, counts toward the 12-week entitlement. This policy should be cross-referenced with Personnel Policy 3.01 Leaves of Absence without Pay, Personnel Policy 3.05 on Short-Term Disability related to Pregnancy and Childbirth, specific provisions of the collective bargaining agreements between New Castle County and Union Locals 459, 1607, 3109, 3911, FOP, Sworn Deputy Sheriffs, any other collective bargaining agreements referencing FMLA and any other applicable policies and procedures. This policy shall be controlling for all employees except where expressly stated otherwise.

LEAVE PROVISIONS: Eligible employees are entitled to take 12 weeks of leave during the defined 12-month period for the following reasons:

1. Birth of a child to the employee, adoption of a child by the employee, or placement of a foster child with the employee.
 - a. Entitlement to leave under this provision expires at the end of the 12-month period beginning on the date of such birth/adoption/placement.
 - b. No intermittent or reduced leave schedule is permitted for leave under this provision.
2. The employee is needed to care for a spouse, child under age 18, or parent with a serious health condition (as defined below).
3. The employee has a serious health condition (as defined below) making him/her unable to perform the essential functions of his/her job.

Injury or illness sustained directly in the performance of the employee's work, resulting in leave, will count towards the 12-week FMLA entitlement.

Serious Health Condition: A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves any of the following:

1. Any period of incapacity or treatment connected with in-patient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility.
2. A period of incapacity requiring absence of more than three consecutive calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider.
3. Any period of incapacity due to pregnancy or for prenatal care.
Any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's disease, stroke, terminal diseases, etc.).
4. Any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

NEW CASTLE COUNTY

PERSONNEL POLICY

NUMBER 3.15

PAGE 2 of 6

DATE 06/19/12

SUBJECT: FAMILY AND MEDICAL LEAVE

APPROVED:

Valencia L. Beatty

Intermittent or Reduced Leave: When medically necessary, leave for a serious illness may be taken intermittently or on a reduced leave basis in blocks of one half hour increments.

1. If leave is foreseeable based upon planned medical treatment, the employee shall make a reasonable effort to schedule treatment so as not to unduly disrupt County operations and, if possible, provide no less than 30 days' notice before leave is to begin, unless treatment is required to begin in less than 30 days.
2. Certification for intermittent/reduced leave for planned medical treatment must include dates of expected treatment and the duration of such treatment.

Married Couples/Parties to a Civil Union Employed by New Castle County: In the case of family leave for a birth, adoption or, placement of a child into foster care, married couples/parties to a civil union are limited to a combined total of 12 weeks. This limitation does not apply to leave for a serious health condition of one of the employees, the employees' child, spouse or parent.

Special Provision for Military Employees and Their Families:

1. **Military Personnel:** The Family and Medical Leave Act for Military employees and their families provides eligible employees up to 12 workweeks of job-protected leave in the applicable 12-month period for a "qualifying exigency" arising out of the active duty or call to active duty status of a spouse, son, daughter or parent. Employees are also eligible to take up to 26 workweeks of job-protected leave in a "single 12-month period" to care for a covered service member with a serious injury or illness.
2. **Military Caregiver Leave:** Eligible employees whose spouse, son, daughter, parent or next of kin (defined below) of a covered service member with a serious injury or illness shall take up to a total of 26 workweeks of unpaid leave during a "single 12-month period" to care for the service member.
3. **Qualifying Exigency Leave:** Eligible employees are granted up to a total of 12 workweeks of unpaid leave during the normal 12-month period established by New Castle County for FMLA leave for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. Under the terms of the statute, qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves; it does not extend to family members of military members in Regular Armed Forces.
4. **Certification Requirements:** Eligible employees who request leave for a qualifying exigency must be supported by a copy of the covered military member's active duty order and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party.
5. **Next of kin:** The FMLA defines a covered service member's "next of kin" as the service member's nearest blood relative, other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and

NEW CASTLE COUNTY

PERSONNEL POLICY

NUMBER 3.15

PAGE 3 of 6

DATE 06/19/12

SUBJECT: FAMILY AND MEDICAL LEAVE

APPROVED:

Alexcia L. Beatty / Bm

sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under FMLA, in which case the designated individual shall be deemed to be the covered service member's next of kin. The regulations provide that all family members sharing the closest level of familial relationship to the covered service member shall be considered the covered service member's next of kin, unless the covered service member has specifically designated an individual as his or her next of kin for military caregiver leave purposes. In the absence of a designation, where a covered service member has three siblings, for example, all three siblings will be considered the covered service member's next of kin.

Eligible employees who request leave to care for a covered service member with a serious injury or illness must be supported by a certification completed by an authorized healthcare provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family.

Procedure: Employees must request, in writing, leave under the provisions of FMLA. This request must be submitted through their general manager or row officer, to the Chief Human Resources Officer or his/her designee.

Notice: Thirty days (30) notice shall be given whenever practicable by the employee to his/her general manager or row officer and the Chief Human Resources Officer, or his/her designee, when the need for leave is foreseeable. When the need for leave is not foreseeable, the employee is required to provide notice as soon as practicable. According to the law, this generally means within five (5) business days of learning of the need for leave. Initial notice in this case may be verbal, but must be followed up in writing. Where extenuating circumstances exist in regard to this notice requirement, individual situations will be considered on a case-by-case basis, and designation of leave is not guaranteed if notice requirements are not met.

Designation of Leave: When the County becomes aware of a situation that qualifies for FMLA leave, and the employee has not requested such leave, the County may designate any time utilized for this situation as FMLA leave. The employee shall be so notified.

Paid or Unpaid Leave

1. When applying for leave under the FMLA to care for the employee's child after birth, an employee: shall use leave in the following order (except where expressly stated otherwise in specific Collective Bargaining Agreements): sick leave (up to 6 to 8 weeks), any available vacation time, other available leave, and unpaid leave for the remainder of the time.
2. When applying for leave under the FMLA after adoption or foster care placement of a child, an employee shall use leave in the following order (except where expressly stated otherwise in specific Collective Bargaining Agreements): any available vacation time, other available leave, and unpaid leave for the remainder of the time.
3. When applying for leave under the FMLA to care for the employee's spouse, child, or parent who has a serious health condition, the employee shall use leave in the following order (except where expressly stated otherwise in specific Collective Bargaining Agreements): sick leave, any available vacation time,

NEW CASTLE COUNTY

PERSONNEL POLICY

NUMBER 3.15

PAGE 4 of 6

DATE 06/19/12

SUBJECT: FAMILY AND MEDICAL LEAVE

APPROVED:

Valencia L. Beatty/lyn

other available leave, and unpaid leave for the remainder of the time.

4. When applying for leave under the FMLA for a serious health condition that makes the employee unable to perform her/his job, the employee shall use leave in the following order (except where expressly stated otherwise in specific Collective Bargaining Agreements): sick leave, any available vacation time, other available leave, and unpaid leave for the remainder of the time. An employee who qualifies for an FMLA leave will be required to use leave as outlined above provided; however, that an employee may elect to retain up to two (2) weeks' vacation and two (2) weeks' sick leave.

Eligibility for Personal Leave Days for Local Union 459: In accordance with FMLA, any consecutive sick or consecutive leave without pay used in conjunction with FMLA shall be counted as a single absence.

Note: In all cases, FMLA leave is for a total of 12 weeks in a 12-month period, except where otherwise noted.

Medical Certification: Any employee seeking leave under the Act for a serious health condition of the employee or a qualified family member must provide to the Chief Human Resources Officer a medical certification issued by the health care provider of the sick person. Subsequent recertification may be required by New Castle County. These forms may be obtained from the Office of Human Resources or on the New Castle County Portal under HR Forms. The certification must state all of the following:

1. the commencement date of the condition,
2. the probable duration of the condition,
3. appropriate medical facts regarding the condition, and
4. as applicable:
 - a. a statement that the employee is needed to care for the family member including the estimated time that such care is needed.
 - b. a statement that the employee is unable to perform the functions of his/her position.
 - c. a statement of the medical necessity for intermittent leave or leave on a reduced schedule.
 - d. the dates on which treatment is expected to be given and the duration of the treatment where intermittent or reduced leave is requested.
 - e. a statement that intermittent or reduced leave is necessary to care for a family member or to assist in the recovery of the family member, including the expected duration and schedule of the leave.

Second and Third Opinions: An employee may be required, at the County's expense, to obtain a second opinion by a health care provider designated or approved by the County. If necessary, a third opinion may be required at the County's expense from a health care provider approved jointly by the employee and the County. This third opinion shall be final and binding.

RETURNING TO WORK: Employees who take leave for 4 or more days due to personal illness must provide certification from the health care provider that the employee can return to work. A fitness-for-duty report provided by New Castle County's occupational health provider shall be required prior to the employee's return. Upon returning from leave, an employee is entitled to be restored to the position held when the leave began, or an equivalent position. The employee is also entitled to receive any applicable pay increases which have occurred and for which the employee would have been eligible during the leave period. Any periods of unpaid leave will result in an adjustment to the employee's anniversary/merit date.

NEW CASTLE COUNTY

PERSONNEL POLICY

NUMBER 3.15

PAGE 5 of 6

DATE 06/19/12

SUBJECT: FAMILY AND MEDICAL LEAVE

APPROVED:

Valencia R. Beatty/Gm

If an employee is no longer qualified to hold the prior position due to the lapse of a license or the inability to attend necessary courses as a result of the leave taken, a reasonable opportunity to fulfill these conditions will be provided upon the employee's return to work.

EMPLOYMENT AND BENEFITS PROTECTION

Health Insurance: Under FMLA, during paid or unpaid leave, an employee is entitled to maintain his/her selected health plan under the same conditions as if employment had continued during the leave period. The employee must continue to pay the employee's portion of the health care premium if the employee's health care plan calls for such payment. An employee may choose not to retain health coverage during leave. However, upon returning from leave, the employee is entitled to be reinstated in the health coverage plan on the pre-leave terms without a qualifying period, physical exam, etc.

The County's obligation to maintain health benefits ceases if an employee's premium payment is more than 30 days late. However, reinstatement of benefits upon the employee's return from leave will be provided. In the event an employee fails to make the premium payments, and the County continues to provide the health care coverage, the County may recover the premiums paid while the employee was on leave. The County may also recover premiums paid during the leave period if the employee fails to return to work after the leave expires unless failure to return to work is due to the continuation, recurrence, or on-set of a serious health condition or other circumstances beyond the employee's control. Recovery of the premium may be collected through a deduction from any sums due to the employee (for example, unpaid wages or severance pay).

Life Insurance: Continuation of Life insurance will be in accordance with the plan policy.

Pension: The employee will not accrue service credit for pension benefits during the period of any unpaid portion of an approved FMLA leave.

GLOSSARY OF FMLA TERMS:

Eligible Employee: Eligibility is determined as of the day FMLA leave is to commence and requires the following:

1. Employment for at least 12 months by New Castle County.
 - a. Twelve months need not be consecutive.
 - b. Twelve months equals 52 weeks for purposes of determining whether intermittent/occasional/casual employment qualifies.
 - c. A week in which an employee is maintained on the payroll counts as a week of employment.
2. The employee has provided at least 1,250 hours of service during the 12 months immediately preceding the period of leave. Exempt employees who have worked at least 12 months for the employer are presumed to have worked at least 1,250 hours during the previous 12 months.

NEW CASTLE COUNTY

PERSONNEL POLICY

NUMBER 3.15

PAGE 6 of 6

DATE 06/19/12

SUBJECT: FAMILY AND MEDICAL LEAVE

APPROVED:

Valencia F. Beatty/gm

Health Care Provider: Health care providers who may provide certification of a serious health condition include:

1. Doctor of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices.
2. Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) who are authorized to practice in the state and are performing within the scope of their practice as defined by state law.
3. Nurse practitioners, nurse midwives and clinical social workers authorized to practice under state law and performing within the scope of their practice as defined under State law.
4. Christian Science practitioners listed with the First Church of Christ Scientist in Boston.
5. Any health care provider recognized by the County.
6. A health care provider listed above who practices in a country other than the United States and who is authorized to practice under the laws of that country.

Spouse: Husband or wife as recognized under state law for purposes of marriage or any party to a civil union as recognized under State law.

Parent: Biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a child; does not include parent-in-law.

Son or Daughter: Biological, adopted, or foster child, stepchild, legal ward, or child of a person standing in loco parentis who is under age 18.

12-Month Period: A rolling 12-month period measured backward from the date leave is to be used.

REQUIRED ACTION: The Office of Human Resources shall be responsible for the communication, explanation, implementation, and maintenance of this policy to assure compliance by all affected employees.

Revised: 01/24/94
Revised: 07/01/97
Revised: 04/01/01
Revised: 12/03/02
Revised: 06/18/07
Revised: 06/19/12