

**YAKIMA COUNTY
FAMILY AND MEDICAL LEAVE POLICY
POLICY NO. HR-008**

Policy Statement:

It is the policy of the County of Yakima to grant up to 12 weeks of family and medical leave during any 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 12 weeks of leave for a “qualifying exigency” or up to 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.

Provisions of negotiated collective bargaining agreements (labor contracts) which conflict with this policy take precedence over this policy to the extent applicable.

Definitions:

1. **"12-Month Period"**: means a 12-month period measured forward from the date the employee’s first FMLA leave begins. (Under this definition an employee would be entitled to 12 weeks of leave during the year beginning on the first date FMLA leave is taken; the next 12-month period would begin the first time FMLA leave is taken after completion of any previous 12-month period.). In the context of Military Caregiver Leave, the single 12-month period begins on the first day Military Caregiver Leave is taken and ends 12 months later.
2. **"Spouse"**: means a husband or wife, as the case may be. (As defined or recognized in the state where the marriage was entered into.)
3. **“Parent”**: means 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 when the employee was a child. A biological or legal relationship is not necessary.)
4. **"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 either under age 18 or age 18 or older and incapable of self-care because of a mental or physical disability. 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.
5. **“Next of Kin”**: means 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.

6. **“Military Family Leave”**: means leave available to certain family members of military service members. There are two types of Military Family Leave:
7. **Active Duty Leave**: means a period of up to 12 weeks of leave which is available during a 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 covered active duty or has been notified of an impending call or order to covered active duty in the Armed Forces in support of a contingency operation. Covered active duty requires deployment to a foreign country or international waters.
8. **Military Caregiver Leave**: means a period up to a total of 26 weeks of leave which is available during a single 12-month period for the care of a covered service member or veteran with serious medical issues.
9. **“Covered Service Member”**: means a member of the Regular Armed Forces or the National Guard or Reserves or a covered veteran who has a serious injury or illness incurred in the line of duty on active duty or a pre-existing illness that was aggravated by service in the line of duty on active duty in the Armed Forces, and who is undergoing medical treatment, recuperation or therapy; is otherwise in military outpatient status, or otherwise on the temporary disability retired list.
10. **“Covered Veteran”** means an individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.
11. **“Qualifying Exigency”**: means 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 fifteen 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);
 - h. Arrangement for alternative care for a parent of the military member;
 - i. Admit or transfer a parent of the military member to a care facility;
 - j. Attend to meetings with staff at a care facility, such as meetings with hospice or social service providers for a parent of the military member; and
 - k. Additional activities agreed to by the Department Head / Elected Official or designee and employee
12. **“Serious Health Condition”**: means 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.

13. **“Serious Injury or Illness for a Current Service Member”** means an injury or illness incurred by a service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank, or rating. It includes injuries or illnesses that existed before the beginning of the service member’s active duty and were aggravated by service in the line of duty on active duty in the Armed Forces.
14. **“Serious Injury or Illness for a Covered Veteran”** means an injury or illness that was incurred or aggravated by the member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a veteran, and is:
 - a. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of his or her office, grade, rank, or rating; OR
 - b. A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition causing the need for caregiver leave; OR
 - c. A physical or mental condition that substantially impairs the veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; OR
 - d. A physical or mental injury on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.
15. **“Health care provider”**: means a doctor of medicine or osteopathy 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 including: (within the scope of their practice) podiatrist, dentist, clinical psychologist, optometrist, clinical social worker, nurse midwife, nurse practitioner, Christian Science practitioner or any health care provider from whom Yakima County’s group health plans will accept certification for the existence of a serious health condition to substantiate a claim for benefits.
16. **“Inpatient care”**: means 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.
17. **“Incapacity”**: means the inability to work, attend school or perform other regular daily activities due to the serious health condition or treatment thereafter or recovery there from.
18. **“Continuing treatment”** 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 two or more times, within 30 (thirty) days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under

the direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by a health care provider; or

- 2) Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under supervision of the health care provider.
 - 3) The requirements in paragraphs a.1 and a.2 of this section for treatment by a health care provider means an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven days of the first day of incapacity.
 - 4) Whether additional treatment visits or a regimen of continuing treatment is necessary within the 30 (thirty) day period shall be determined by the health care provider.
 - 5) The term “extenuating circumstances” in paragraph a.1 of this section means circumstances beyond the employee’s control that prevent the follow up visit from occurring as planned by the health care provider.
- b. Any period of incapacity due to pregnancy or for prenatal care.
- c. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition which:
- 1) Requires periodic visits, at least twice a year, for treatment by a health care provider or by a nurse under the direct supervision of a health care provider;
 - 2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - 3) May cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.)
- d. A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. (e.g. Alzheimer’s, severe stroke or terminal stage illness). The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- e. Any period of absence to receive multiple treatments (including recovery) 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 consecutive full calendar days in the absence of medical intervention or treatment such as cancer chemotherapy/radiation, severe arthritis physical therapy, kidney disease dialysis.
- f. Absences attributable to incapacity under paragraphs b. or c. of this section qualify for FMLA leave even though the employee or covered family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive full calendar days.

Eligibility:

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

1. An employee must have worked for Yakima County at least 12 months, or 52 weeks. The 12 months or 52 weeks, need not have been consecutive, but employment prior to a seven-year break in service shall not qualify as time worked. 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.
2. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave would begin. (Does not include paid or unpaid absences.)

Type of Leave Covered:

Yakima County will grant FMLA leave to eligible employees for one or more of the following:

1. Because of the birth of a son or daughter of the employee, and in order to care for such son or daughter.
2. Because of the placement of a son or daughter with the employee for adoption or foster care.
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 condition.
4. Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.
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 requiring deployment to a foreign country or international waters.
6. In order to care for a covered service member with a qualifying serious illness or injury that occurred or was aggravated in the line of duty and who is the employee's spouse, parent, son, daughter, or next of kin.
7. In order to care for the parent of a covered service member when the parent is incapable of self-care and the covered active duty or call to covered active duty of the military member necessitates a change in the existing care arrangement for the parent.

If both spouses work for Yakima County, their total leave in the applicable 12-month period may be limited to an aggregate of 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 (e.g. 12 weeks of Active Duty Leave and/or 26 weeks of Military Caregiver Leave).

Employees with questions about which absences or illnesses are covered under this FMLA policy or under Yakima County's sick leave policies are encouraged to consult with the Human Resources Department.

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, Yakima 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.

Each time an employee takes leave under this policy, Human Resources will compute the amount of leave an employee has taken and deduct it from the family and medical leave available to the employee. The balance remaining is the amount an employee is entitled to take at that time.

Employee Status and Benefits During Leave:

Yakima County will continue the employee's health benefits during any leave without pay period covered under this policy at the same level and under the same conditions as if the employee had continued to be in paid status. If an employee chooses not to return to work for reasons other than a continued serious health condition, Yakima County will require the employee to reimburse the County's portion of the health care premium during the leave without pay period.

Under Yakima County's current policy, an employee may pay a portion of the health care premium. While in paid status, Yakima County will continue to deduct the employee's share of the premium from the regular payroll check. While an employee is in leave without pay status, the employee must continue to make this payment, either in person or by mail. 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 30 (thirty) days late, the employee's health care coverage may be suspended for the duration of the leave.

If an employee has purchased County sponsored voluntary insurance such as Voluntary Term Life Insurance or Voluntary Disability Insurance, Yakima County will continue to take a payroll deduction while an employee is in paid status. While an employee is in leave without pay status, the employee must continue to pay those premiums, along with the health insurance premium payments. If an employee does not continue these payments, Yakima County will suspend coverage during the leave without pay period.

Benefits provided by the County are subject to status coverage maximums and eligibility requirements as indicated by each individual insurance carrier. Employee's entitlement to continue coverage at group rates varies based on type of coverage purchased and length of unpaid leave.

Employee Status After Leave:

An employee on leave under this policy will be restored by Yakima 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. 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.

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, Yakima 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.

Use of Paid Leave and Leave without Pay:

All paid leave banks must be exhausted prior to use of unpaid leave unless the employee has elected unpaid leave under worker's compensation or a disability leave benefit plan. Refer to HR-029 Yakima County WA State Paid Sick Leave Policy.

Intermittent Leave or a Reduced Work Schedule:

When medically necessary, the employee may take FMLA leave in 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 hour schedule.

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 12 weeks (26 weeks in the case of Military Caregiver Leave) over the applicable 12-month period.

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.

Certification of a Serious Health Condition:

Yakima 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 15 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. Medical certification forms are available in the Human Resources Department and the County intranet / YCShare.

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. Yakima County Human Resources 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 to this contact may be denied, or lose FMLA protection if his or her medical certification is incomplete or insufficient.

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. Yakima County has the right to require periodic medical re-certification for absences related to a serious health condition which continues for more than 30 (thirty) days.

Except in the case of Military Caregiver Leave certified by the DOD, VA, or TRICARE, Yakima County has the right to ask for a second opinion if it has reason to doubt the validity of the certification. Yakima County will pay for the expense of the second opinion and will select the health care provider based on diagnosis. If necessary to resolve a conflict between the original certification and the second opinion, Yakima County will require the opinion of a third health care provider. Yakima County and the employee will jointly select the third health care provider, and Yakima County will pay the expense for the third opinion which will be considered final.

Certifying and Verifying Active Duty (Qualifying Exigency) Leave

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

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 that the meeting is scheduled or that the employee's absence is required.

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

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

Certifying and Verifying Military Caregiver Leave

Yakima 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, a Department of Defense non-network TRICARE authorized private health care provider or a health care provider who is not affiliated with DOD, VA, or TRICARE. 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. An employee may also submit documentation of enrollment of the service member in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers as sufficient certification of a covered veteran's serious injury or illness.

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).

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

Procedure for Requesting Leave:

All employees requesting leave under this policy must submit a request to their Department Head/Elected Official (or designee) or Human Resources.

Foreseeable Leave: When an employee plans to take foreseeable leave under this policy, the employee must give Yakima County Human Resources Department at least (30) thirty days notice. Such notice must be in writing and set forth the reasons for the requested leave, the anticipated duration of the leave, and the anticipated start of the leave. County FMLA request forms are available in Human Resources. If it is not possible to give (30) thirty days notice, an employee must give notice as soon as practicable. "As soon as practicable" means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. It should be practicable for the employee to provide notice on the same day he or she learns of the need for leave or the next business day, absent any unusual circumstances or emergency situations. If an employee fails to provide (30) thirty days notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least (30) thirty days from the date Yakima County Human Resources receives notice. Only 14 days notice is required for care of a terminally ill child. (This 30-day notice provision does not apply to Military Caregiver Leave. For foreseeable leave due to a qualifying exigency, notice must be provided as soon as practicable regardless of how far in advance such leave is foreseeable.)

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 Department Head / Elected Official or designee to attempt to minimize the workplace disruption, the Department Head / Elected Official or designee 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.

Unforeseeable FMLA Leave: When the approximate timing of the need for leave is not foreseeable, an employee must provide notice to the Department Head / Elected Official or designee as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave on the same day he or she learns of the need for leave or the next business day, absent any unusual circumstances or emergency situations. Notice may be given by the employee's spokesperson (e.g., spouse, adult family member, or other responsible party) if the employee is unable to do so. If an employee does not comply with the notice provisions for unforeseeable leave and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.

Extension of FMLA Leave: 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.

Adopted Copy Available at
Yakima County Human Resources
128 N. 2nd Street, Room B27
Yakima, WA 98901