

# Family and Medical Leave

**Index Code:** 713

**Effective Date:** 11/20/17 Revised 3/1/21

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## **I. Purpose**

The purpose of this directive is to provide for the implementation of the Family and Medical Leave Act, and is applicable to all employees of the Queen Anne's County Office of the Sheriff except where exempted by law.

## **II. Policy**

It is the policy of the Queen Anne's County Office of the Sheriff to provide all eligible employees with family and medical leave consistent with the Family and Medical Leave Act ([www.dol.gov](http://www.dol.gov)).

## **III. General Procedures**

The Family and Medical Leave Act (FMLA) is a federal regulation that protects employment and benefits for up to twelve (12) weeks (480 hours) during a twelve-month period. Eligible employees will be granted a combination of family leave, medical leave, and/or military leave for up to twelve (12) weeks in a rolling twelve-month period.

The rolling twelve-month period is measured from the last date that an employee uses any family, medical and/or military leave. Employees granted military caregiver leave may receive a maximum of twenty-six (26) weeks of leave in a single twelve-month period.

A. While on approved FMLA leave, employees shall use accrued sick leave, personal leave, and/or vacation leave. Employees without sufficient leave time to cover the FMLA period may spread their leave time throughout this period to cover benefit deductions. Should the employee have insufficient leave to cover the FMLA period, the leave will be without pay. In addition:

1. Employees are not required to request leave without pay for any approved FMLA reason.
2. Co-workers may donate leave in accordance with the Queen Anne's County Government's Sick Leave Donation Policy, which the Office of the Sheriff has adopted.
3. Employees may request advanced sick leave in accordance with the Queen Anne's County Department of Human Resources Ordinance, §27-91 B, 8.
4. Employees suffering work related injuries may elect to be paid through workers' compensation benefits as coordinated by the Queen Anne's County Department of Human Resources.

B. Holidays occurring during a full workweek of FMLA leave count as FMLA leave; if an employee works any part of a workweek during which a holiday falls, the holiday does not count as FMLA leave.

C. In a case which both spouses are employed by the Office of the Sheriff, and are entitled to family and/or medical leave, they would be limited to a combined total of twelve (12) weeks (i.e. six (6) and six (6), eight (8) and four (4), etc.) for such leave in the rolling twelve (12) month period for birth or placement of a child or to care for a sick spouse, child, or parent, if such spouse, child, or parent has a serious health condition. Any remaining leave time may be used for the individual employee's own serious health condition.

D. If medically necessary, the employee may request that his/her leave be taken on an intermittent or reduced leave schedule. The employee must submit his/her request for intermittent leave in writing along with a statement from the employee's health care provider that explains why intermittent leave is medically necessary. If the intermittent leave is foreseeable based on planned medical treatment, the Office of the Sheriff may require the employee to temporarily transfer to an alternative position, with equivalent pay and benefits, which better accommodates recurring periods of absence or a part-time schedule.

#### **IV. Eligibility**

To be eligible for FMLA, an employee must meet both of the following conditions:

A. He/she has worked a minimum of 1,250 hours during the twelve (12) months prior to the commencement of the leave of absence, and

B. He/she has been employed with the Queen Anne's County Office of the Sheriff for at least one year.

1. The one year of employment indicated above need not be continuous. However, breaks in employment of more than seven (7) years do not need to be counted unless the break was due to National Guard or Reserve military service.

2. If the employee meets the one year of employment while on a non-FMLA leave, the employee becomes eligible on the one year date. In this case, leave prior to the one year of employment is non-FMLA leave and leave on or after the one year of employment is FMLA leave.

#### **V. Types of Leave**

Leave will be approved for eligible employees for one or more of the following reasons:

A. Family Leave – The birth of the employee's child and to care for such child, or the placement of a child with the employee for adoption or foster care.

B. Medical Leave – In order to care for the spouse, child, or parent of the employee due to a serious health condition, or the employee's own serious health condition which makes him/her unable to perform the essential functions of his/her position.

1. Spouse is defined as the employee's legally recognized husband or wife.

2. Child, for medical leave, is a person who is under eighteen (18) years of age, or eighteen years or older and incapable of self-care due to a mental or physical disability, and who is the employee's biological child, adopted child, foster child, stepchild, or legal ward.

3. Parent is the employee's biological father or mother, adoptive father or mother, or an individual who assumed the legal rights, duties, and responsibilities of guardianship over the employee when the employee was a child. A parent is not a parent-in-law. Additionally, uncles, aunts, or other family relatives will not be considered as parents unless those relatives assumed the legal rights, duties, and responsibilities of guardianship over the employee when said employee was a child.

4. 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.

5. Subject to certain conditions, the Continuing Treatment requirement may be met by a period of incapacity of more than three (3) consecutive calendar days combined with at least two (2) 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. Other conditions may meet the definition of continuing treatment as provided in the Family Medical Leave Act or in these regulations.

## **VI. Military Leave**

Military Leave consists of either Military Exigency Leave or Military Caregiver Leave.

A. To be a qualifying Military Exigency Leave, the leave must be for an employee who has a spouse, son/daughter, or parent in the Regular Armed Forces, National Guard, or Reserves and called to active duty.

B. Son or daughter, for Exigency Leave, is a member of the military who is on active duty or called to active duty status and for whom the employee acted as parent as previously defined.

C. Qualifying exigency includes any one or more of the following as provided in the Family Medical Leave Act or in these regulations:

1. Short-notice deployment activities
2. Military events and related activities
3. Childcare and school activities
4. Financial and legal arrangements
5. Counseling activates
6. Rest and recuperation activities
7. Post-deployment activities
8. Additional related activities

D. Military Caregiver Leave is to allow an employee who is the spouse, son/daughter, parent, or next of kin of a current service member in the Regular Armed Forces, National

Guard, or Reserves, who has incurred serious injury or illness in the line of duty while on active duty to take FMLA leave to care for the service member.

Caregiver Leave includes veterans who are undergoing medical treatment, recuperation, or therapy for serious injury or illness and who was a member of the Armed Forces, National Guard, or Reserves at any time during the five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

E. The maximum amount of Caregiver Leave is twenty-six (26) weeks in a single twelve-month period on a per-covered service member, per-injury/illness basis. During the single twelve-month period, Caregiver Leave is combined with regular FMLA leave and the total cannot exceed twenty-six (26) weeks.

F. Son or Daughter, for Caregiver Leave, is a covered service member's biological, adopted, foster child, stepchild, legal ward, or a child for whom the covered service member acted as a parent as previously defined.

G. Next of Kin of a covered service member, for Caregiver Leave, is the nearest blood relative of a covered service member (other than his/her spouse, parent, son or daughter), in the following priority order:

1. A blood relative designated in writing by the service member as his/her nearest blood relative for purposes of Caregiver Leave.
2. Blood relatives who have been granted legal custody of the service member by court decree or statutory provisions.
3. Brothers and sisters.
4. Grandparents.
5. Aunts and uncles.
6. First cousins.

H. Prior to deployment exceeding 90 days, the Under Sheriff or his designee will conduct a pre-deployment interview with the employee at which time all items belonging to the Sheriff's Office including uniform and weapons will be collected for safekeeping and the employee shall be designated on Non-Officer status.

## **VII. Employee Notice**

Employee notice of requested leave need only be oral; however, employees are required to notify their immediate supervisor who will forward the information in writing up the chain of command. Employees are encouraged to submit all requests in writing, using the standard interoffice correspondence format.

A. For "foreseeable" leave, employees are responsible for providing at least thirty (30) days advance notice, or as soon as practical, normally the same business day or the next business day if off work, when he/she learns of the need for leave.

The employee must consult with his/her supervisor in advance to make a "reasonable effort" to schedule planned treatment so as not to unduly disrupt agency operations.

- B. For “unforeseeable” leave, employees are to provide notice of the need for leave as soon as practicable, normally the same business day or the next business day if off work, when he/she learns of the need for leave.
- C. When requesting leave, the employee must provide detailed information as to the nature of the requested leave in order for the Office of the Sheriff to determine what benefits are applicable. Simply calling in “sick” is not sufficient.
- D. When subsequently requesting leave for the same FMLA-qualifying reason for which leave has previously been approved, the employee must specifically reference the qualifying reason or state FMLA leave.
- E. Employees who will be on medical/injury leave five (5) days or longer are responsible for providing completed Health Care Provider Certification Forms (WH-380-E, WH-380-F and WH-385) as provided by the Department of Human Resources within the established time frame; typically fifteen (15) calendar days. Employees must provide updates to the Office of the Sheriff Administrative Services division or their designee at least every thirty (30) days from the onset date. The updates will be from the employee’s physician noting continuing restrictions, if any, and estimated date of availability to return to full duty. Prior to returning to duty from this medical/injury leave, the employee will provide written clearance from either their own physician or the Office physician noting whether the clearance is for full or modified duty. If modified duty is recommended, the restrictions will be detailed and the above updates will continue to be required until final full duty clearance is provided. The Administrative Services Commander or their designee may require the employee’s health care provider to sign off on the employee’s job description.
- F. Sworn officers whose physicians place them on medical leave and who certify that they are physically or mentally unfit to perform the duties and responsibilities required of their position, will be placed on Non-Officer Status with the Maryland Police & Correctional Training Commission (MPCTC). The effective date will be the date of the MPCTC notification. The officer’s agency vehicle shall be turned in to the agency Fleet Manager and PPV privileges shall be temporarily suspended.
- G. Sworn officers, whose extended medical leave places their compliance with required training standards in jeopardy, will also be placed on Non-Officer Status. This determination will be made prior to the third Monday of November in every calendar year for those officers who are not expected to return to duty in that calendar year. The effective date will be the date of the MPCTC notification.
- H. Division Commanders or their designee are responsible for retrieving MPCTC identification, badges and any issued firearm(s) from sworn personnel who are on Non-Officer Status.
- I. If the fitness-for-duty certification is incomplete or insufficient, the employee shall be encouraged to provide HIPAA authorization to the Administrative Services Commander or their designee who then may contact the employee’s health care provider or agency physician directly to authenticate and/or clarify the certification.

**VIII. Employer Notice**

A. Supervisors are to notify the Department of Human Resources immediately of any employee notification for FMLA leave. For health conditions whereby it is unclear if it will materialize into FMLA, the supervisor is to notify the Department of Human Resources when the employee has been absent for three (3) days.

B. The Department of Human Resources will forward a completed eligibility Notice Form (form WH-381) to the respective employee indicating if he/she is eligible for FMLA leave and the rights and responsibilities for taking such leave. Typically this form will be sent within five (5) business days.

C. The Department of Human Resources will forward the appropriate Health Care Provider Certification Form (WH-380-E, WH- 380-F, WH-384 and WH-385) with a copy of the respective position description to the employee and a FMLA Application Form.

D. A Designation Notice (Form WH-382) will be sent to employees by the Department of Human Resources typically within five (5) business days following receipt of the appropriate Health Care Provider Certification Form notifying them if their leave will be designated (approved) as FMLA leave.

**IX. Retention of Benefits**

An employee that is on approved FMLA leave may retain their benefits under the following conditions:

A. Employees using sick leave, personal leave and/or vacation leave to be paid during their leave of absence will continue to have their regular benefit premiums deducted in order to maintain their level of benefits and will continue to accrue sick, personal and vacation leave. Employees will be paid holiday leave in accordance with the Human Resource Ordinance §27-89 for any holidays occurring during their FMLA leave period.

B. Employees on an unpaid leave of absence will be responsible for making their share of the benefit premium payments to the Department of Budget and Finance in order to maintain their level of benefits and will not accrue sick, personal or vacation leave. Employees on an unpaid leave will continue to be paid holiday leave in accordance with the Human Resources Ordinance §27-89 for any holidays occurring during their FMLA leave period even though they are not eligible for accruing other forms of leave.

**X. Restoration of Employment**

At the end of the approved FMLA leave, the employee will be entitled to either be restored to the position held prior to his/her leave or to an equivalent position with equivalent pay, benefits and other conditions of employment.

A. Complete and sufficient fitness-for-duty certifications shall be required from employees returning from a continuous leave upon return to work. Failure to provide such certification may lead to a delay in reinstatement of employment.

B. Employees seeking to return to work with work restrictions shall provide a statement from their healthcare provider detailing the restrictions. The Chief Deputy, in consultation with the employee's Division Commander, will determine if the restrictions can be accommodated. Should additional information be needed to make such determination, the employee will be asked to have the health care provider submit the additional information. The Administrative Services Commander or their designee may require the employee's health care provider to sign off on the employee's job description.

C. If the fitness-for-duty certification is incomplete or insufficient, the employee shall be encouraged to provide HIPAA authorization to the Administrative Services Commander or their designee who then may contact the employee's health care provider or agency physician directly to authenticate and/or clarify the certification.

D. Failure to return to work at the expiration of FMLA leave may be considered a resignation. A non-FMLA medical leave of absence may be available following an approved FMLA leave.

**XI. Medical Leave of Absence beyond FMLA**

Employees who exhaust their FMLA leave may request non-FMLA medical leave of absence.

A. Non-FMLA medical leave of absence may be with pay if the employee has available sick, vacation or personal leave or without pay if the employee has exhausted all available paid leave.

B. Employees suffering work related injuries may elect to be paid through Worker's Compensation benefits as coordinated by the Queen Anne's County Department of Human Resources.

C. A written request must be submitted to the Undersheriff for approval. If approved, the maximum amount of non-FMLA medical leave available to the employee is based upon the most recent length of continuous service with the Office of the Sheriff at the time the original leave commenced as follows:

Maximum Non-FMLA Medical	Years of Continuous Service
1 week	0 to 2 years
2 weeks	3 to 4 years
3 weeks	5 to 6 years
4 weeks	7 to 8 years
5 weeks	9 to 10 years
6 weeks	10+ years

D. If the employee's request for non- FMLA medical leave is denied, or upon completion of the maximum approved leave, the employee has not returned to work, the employee may be terminated or if eligible may apply for retirement disability.

E. During the non-FMLA medical leave, salary increases and County provided life insurance shall cease until the employee returns to active work with the Office of the Sheriff.

F. The above chart will be followed by the Office of the Sheriff in the vast majority of cases. The Sheriff or his designee reserves the right to grant additional time of non-FMLA leave in the limited and unique circumstances when the employee's leave is a result of a serious line of duty injury **and** there exists the possibility of the employee returning to full duty.

G. The Office of the Sheriff recognizes that employees who have accumulated significant leave may sustain a serious non work related health condition or injury that prevents his or her return to employment within the FMLA time frames set forth in the above chart. To reward employees who have been judicious in their use of leave, the Sheriff or his designee reserves the right to allow those employees to exhaust part of or all accumulated leave for serious non work related medical conditions or injuries **if** there exists the possibility of the returning to full duty.

1. Health insurance shall continue while the employee is on leave status as long as the employee pays the contribution. At the time of exhaustion of approved leave and termination of employment, health insurance coverage may be continued only if the employee contributes to the full cost in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA).

2. Other provided employee benefits such as leave accrual will continue unless the employee is in a leave without pay status.

**XII.** While on non-FMLA medical leave, employment is not guaranteed. The Sheriff may begin the process of filling the employee's position. The employee may reapply with the Office of the Sheriff should his/her condition change to meet the requirement(s) of employment.

**XIII. CALEA References:** 22.2.1a, 22.2.1b, 22.2.1c, 22.2.1d & 22.2.1e.

**XIV. Proponent Unit:** Administrative Services

**XV. Cancellation:** This directive replaces written directive date 8/6/19 and Queen Anne's County Standard Operating Procedure 300-401, Family and Medical Leave.

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Sheriff Gary Hofmann