

ORDINANCE NO. O-21-17

BE IT ENACTED BY THE QUORUM COURT OF GARLAND COUNTY, STATE OF ARKANSAS; AN ORDINANCE TO BE ENTITLED:

“AN ORDINANCE TO ADOPT THE GARLAND COUNTY, ARKANSAS FAMILY MEDICAL LEAVE ACT POLICY; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.”

WHEREAS, The Human Resources Committee has reviewed the Garland County, Arkansas Family Medical Leave Act Policy and,

WHEREAS, The Human Resources Committee previously met and recommended that adoption of the policy listed below be ratified by the full Quorum Court.

Family Medical Leave (FMLA)

Garland County complies with the Family and Medical Leave Act of 1993 (FMLA), Pub. L. 103-3. As the FMLA specifies a county is a single employer, all elected officials, county offices, and departments will administer the FMLA in a uniform and consistent manner in compliance with the federal law. Eligibility criteria and general guidelines used in administering this policy are set forth below. Interpretation of circumstances not specifically covered in this policy will be made in accordance with applicable law. Garland County administers the FMLA in accordance with the county Equal Employment Opportunity (EEO) Policy.

1. **Employee Eligibility Criteria.** To be eligible for FMLA leave, an employee must have been employed by the county for at least twelve (12) months, whether consecutive or intermittent, and have worked at least 1,250 hours during the previous twelve (12) months. All absences from work for covered military service are counted in determining an employee’s eligibility for FMLA leave. There may be an exclusion for Elected Officials and their appointees pursuant to 29 CFR 553.11.

2. **Qualifying Events for FMLA Leave.** Purposes for which FMLA leave can be taken are:
 - a) for the birth of a son or daughter, and to bond with the newborn child;
 - b) for the placement with the employee of a child for adoption or foster care, and to bond with that child;
 - c) to care for an immediate family member (spouse, child, or parent – but not a parent “in law”) with a serious health condition;
 - d) to take medical leave when the employee is unable to work because of a serious health condition; or
 - e) for qualifying exigencies (see Fact Sheet #28M(c): Qualifying Exigency Leave under the FMLA) arising out of the fact that the employee’s spouse, son, daughter, or parent is on covered active duty or call to covered active duty status as a member of the National Guard, Reserves, or Regular Armed Forces.

3. **Serious Health Condition.** A serious health condition is an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Examples include:
 - a) conditions requiring an overnight stay in a hospital or other medical care facility;

- b) conditions that incapacitate you or your family member (for example, unable to work or attend school) for more than three consecutive days and have ongoing medical treatment (either multiple appointments with a health care provider, or a single appointment and follow-up care such as prescription medication);
- c) chronic conditions that cause occasional periods when you or your family member are incapacitated and require treatment by a health care provider at least twice a year; and
- d) pregnancy (including prenatal medical appointments, incapacity due to morning sickness, and medically required bed rest).

FMLA leave due to the birth, adoption, or placement for foster care of a child does not require medical necessity or a period of incapacity. FMLA leave is available for bonding with the baby/child.

4. **How Much FMLA Leave May Be Taken?** An eligible employee is entitled to up to 12 workweeks (480 hours) of FMLA leave during a 12-month period for any FMLA-qualifying event(s) as listed above. The 12-month period is the 12 months measured forward from the date FMLA leave begins. FMLA leave for qualifying exigencies, when combined with other FMLA leave, may not exceed 26 weeks in a single 12-month period.

When the county employs both spouses, the employees are together entitled to a combined total of 12 workweeks of FMLA leave within the designated 12-month period for the following FMLA-qualifying reasons:

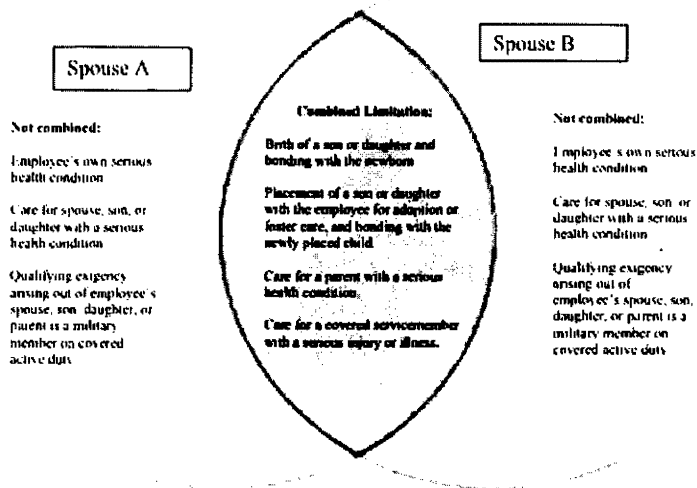
- a) for the birth of a son or daughter, and to bond with the newborn child;
- b) for the placement with the employee of a child for adoption or foster care, and to bond with that child;
- c) the care of a parent with a serious health condition.

The combined limitation on the amount of FMLA leave for spouses both employed by the county does not apply to some FMLA-qualifying events. Eligible spouses are each entitled to up to 12-workweeks (480 hours) of FMLA leave within the designated 12-month period, without regard to the amount of leave their spouse uses, for the following FMLA-qualifying reasons:

- a) the care of a spouse or son or daughter with a serious health condition;
- b) a serious health condition that makes the employee unable to perform the essential functions of his or her job; and
- c) any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on "covered active duty."

Both together are entitled to a combined total of 26 workweeks of FMLA leave within the designated 12-month period to care for a covered service member with a serious injury or illness (commonly referred to as "military caregiver leave") if each spouse is a parent, spouse, son or daughter, or next of kin of the service member. When spouses take military caregiver leave as well as other FMLA leave in the same leave year, each spouse is subject to the combined limitations for the above listed leave reasons.

Combined Limitation Chart



5. **Pay Status and Benefits During FMLA Leave.** Eligible employees will be required to use available sick and vacation leave concurrently with unpaid FMLA leave. Once an employee's paid leave is exhausted, the employee will be in unpaid status for the remainder of FMLA leave.

Any leave related to a serious health condition that results from a Worker's Compensation absence will be required to be taken concurrently with FMLA leave.

Garland County will continue an employee's county-paid health insurance benefits during the FMLA leave at the same level and under the same conditions as if the employee was continuously at work.

While using available sick and vacation leave concurrently with FMLA leave, the county will continue to make payroll deductions to collect the employee's share of insurance premiums. When paid leave is exhausted and the employee is on unpaid FMLA leave, the employee must pay the employee portion of the insurance premiums in order to maintain insurance coverage. Payment must be made by the 15th of each month to the Garland County Treasurer either in person or by mail. If the payment is more than 30-days late, the employee's health insurance benefits may be terminated for the duration of the FMLA leave. The county will provide 15-days notice prior to the employee's loss of coverage.

If the employee contributes to a voluntary insurance product (e.g., life insurance, accident, disability, etc.) the county will continue to make payroll deductions to collect the insurance premium while on paid leave. While on unpaid leave, the employee must request continuation of these benefits and pay the premiums.

Group health coverage provided under the FMLA is not Consolidated Omnibus Budget Reconciliation Act (COBRA) continuation coverage, and taking FMLA leave is not a qualifying event under COBRA. A COBRA qualifying event may occur, however, when the county's obligation to maintain health benefits under FMLA ceases, such as when an employee taking FMLA leave decides not to return to work and notifies the county of their

intent not to return to work. If the employee does not return to work following FMLA leave, the county may require the employee to repay the county's share of insurance premium payments made during the employee's FMLA leave. The county will initiate collection action if the employee refuses or fails to reimburse the county.

6. **Intermittent or Reduced Work Schedule.** Eligible employees may take FMLA leave for a continuous period of time, on an intermittent basis (periodically), or to work a reduced schedule. In all cases, the FMLA leave may not exceed a total of 12 workweeks (or 26 workweeks for a qualifying exigency) in a 12-month period.

For the birth, adoption or foster care of a child, the county and employee must mutually agree to the schedule before the employee may take the FMLA leave intermittently or work a reduced-hour schedule. FMLA leave for birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.

If an employee takes FMLA leave intermittently on a reduced-hour schedule basis, the employee must attempt to schedule the FMLA leave so as not to unduly disrupt county operations.

When an employee takes FMLA leave intermittently on a reduced-hour schedule basis for foreseeable, planned medical treatment, the county may temporarily transfer the employee to an alternate position with equivalent pay and benefits for which the employee is qualified and which better accommodates the intermittent or reduced-hour schedule.

7. **Notice.** An eligible employee requesting FMLA leave must provide verbal or written notice of the need for FMLA leave. Written notice must be provided using the "FMLA Employee Request Form".

When the need for FMLA leave is foreseeable, the employee must provide at least 30-days notice. When an employee becomes aware of the need for FMLA leave fewer than 30 days in advance, the employee must provide notice as soon as is practicable, generally the same or following business day. When the need for FMLA leave is not foreseeable, the employee must comply with the county's usual and customary notice and procedural requirements for requesting leave.

If the employee has not notified the county of the reason for the leave, and the employee desires that leave be counted as FMLA leave, the employee must notify the county within two business days of the employee's return to work that the leave was for a FMLA reason.

Within five (5) business days of the employee providing notice, the Human Resources Director, or designee, will provide the employee with a Notice of Eligibility and Rights and request for medical certification and/or other supporting documentation.

8. **Medical Certification.** An eligible employee is required to submit medical certification from a health care provider to support a request for FMLA leave for the employee's or a family member's serious health condition. The county may use a health care provider, human resources professional, leave administrator, or management official to clarify or authenticate the initial certification with notice to the employee or, the county may require

the employee to obtain a second opinion by an independent county-designated provider at the county's expense. If the initial and second certifications differ, the county may, at the county's expense, require the employee to obtain a third, final, and binding certification from a jointly selected health care provider.

During FMLA leave, the county may request that the employee provide recertification of a serious health condition at intervals in accordance with the FMLA. The county may request, and employee must provide, periodic reports regarding the employee's status and intent to return to work. An employee's notice of intent not to return to work will be considered a voluntary resignation.

9. **Designation of FMLA.** Within five (5) business days of receipt of required medical certification and/or other supporting documentation the Human Resources Director, or designee, will complete and provide the employee with a Designation Notice. This notice will indicate the approval of FMLA leave and that all leave taken for this reason will be designated as FMLA leave and will count against the amount of FMLA leave the employee has available to use in the 12-month period.
10. **Return from FMLA Leave.** An employee returning to work must be able to perform the essential functions, with or without reasonable accommodations, of the position the employee held before the FMLA leave or an equivalent position with equivalent pay, benefits, and other employment terms. Before the employee returns to work from FMLA leave for the employee's own serious health condition, the employee shall communicate an expected return date to the Human Resources Director, or designee, and submit a fitness-for-duty certification from the employee's health care provider, which states that the employee is able to return to work with or without reasonable accommodations. Accommodations that create an undue hardship on the employer under the law may be denied.

An employee who is unable to return to work when FMLA leave is exhausted must request and obtain authorization from the Human Resources Director and the Elected Official/Department Head to take additional leave. In these instances, the county will administer the FMLA in accordance with the Americans with Disabilities Act (ADA) (see The FMLA, the ADA, and Title VII of the Civil Rights Act of 1964).

Upon return from FMLA leave, the county will restore the employee to the same or equivalent position with equivalent pay, benefits, and other terms and conditions of employment. An employee is entitled to reinstatement only if the employee would have continued to be employed had FMLA leave not been taken. Thus, an employee is not entitled to reinstatement if, because of layoff, reduction in force, or other reasons, the employee would not be employed at the time job restoration is sought.

The county reserves the right to deny restoration to a key employee (as defined under the FMLA as those who are among the highest paid 10 percent of the organization's employees) if such restoration will cause substantial and grievous economic injury to the county. If designated as a key employee, the county will inform the employee in writing that the employee is considered a key employee at the time FMLA leave is requested. The county

will also inform the employee of the potential that reinstatement to the employee's job and maintenance of benefits may be denied.

If appropriate documentation is not received in a timely manner, return to work may be delayed or denied. Failure to provide required documentation may result in termination of employment.

11. FMLA Rights and Obligations. The county will not:

- a) Interfere with, restrain, or deny the exercise of any right provided under the FMLA; or
- b) Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to the FMLA.

The FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law providing greater family or medical leave rights.

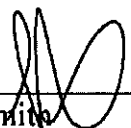
SECTION 1. That the Garland County, Arkansas Family Medical Leave Act Policy is to be adopted as though set out herein word for word and is accepted as the procedure and standard for employees of Garland County, Arkansas.

SECTION 2. SEVERABILITY. If any portion of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions or applications of the Ordinance which can be given without the invalid provisions or application, and to this end the provision of this Ordinance is declared to be severable.

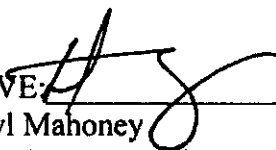
SECTION 3. That this Ordinance shall be codified in the Garland County Code of Ordinances and the Sections may be re-numbered and re-lettered to accomplish such intention.

SECTION 4. As time is of the essence in getting this policy initiated an **emergency** is hereby declared to exist, and this Ordinance shall be in full force and effect from and after its passage and approval.


ATTEST:


Sarah Smith
Garland County Clerk

APPROVE:


Darryl Mahoney
Garland County Judge

SPONSOR:


Thomas Anderson
Justice of the Peace

DATE: 06/14/2011

