



## Family and Medical Leave

*Adopted on: 9/1993*

**Last Revision Date: 12/20/2023**

**Policy No. 4.711**

**Last Enabling Resolution:  
267-2023/930-2023**

**Developer/Reviewer:  
Human Resources**

### 1. Purpose

The purpose of this policy is to allow employees to be absent from work in conformity with the Family and Medical Leave Act (FMLA) of 1993; revised January 16, 2009; and in accordance with the provisions of the National Defense Authorization Act for Fiscal Year 2010 (H.R. 2647).

### 2. Scope

This policy applies to all Sedgwick County employees.

### 3. Policy Statement

Under certain conditions, the FMLA entitles eligible employees job-protected time off, with or without pay, for personal and/or qualified family member(s)' health reasons as well as exigency leave as a result of a military deployment.

- A. Eligibility – Employees who have worked for the County for at least twelve (12) months over the last seven (7) years (need not be consecutive) and who have worked at least 1,250 hours during the previous twelve (12) months, may be eligible for Family Medical Leave (FML). If an employee is unable to be at work due to being on an active military leave, an exception to the requirement for 1,250 hours worked will be made.
- B. Qualifying Leave – up to twelve (12) workweeks of FML may be taken by eligible employees. If caring for a seriously injured or ill service member or honorably discharged veteran, up to twenty-six (26) workweeks of FML may be taken. Leave is computed by averaging the number of hours worked weekly during a rolling calendar year (12-month period). FML may be taken for the following reasons:
  1. A serious health condition that makes the employee unable to perform the essential functions of his or her position; or
  2. The birth of an employee's son or daughter; or
  3. The placement of a child under 18 with the employee for adoption/foster care; or
  4. To care for the employee's spouse, son, daughter or parent with a serious health condition; or

5. For any qualifying exigency arising out of the fact that a spouse, son, daughter or parent is a military member on covered active duty or called to covered active duty status (overseas deployment only); or
6. Military Caregiver Leave: To care for a current service member or an Honorably Discharged Veteran of the Armed Forces (including the National Guard or Reserves) experiencing a serious injury or illness which was incurred or aggravated while in the line of duty in the Armed Forces. The service member must be a parent, son, daughter, spouse or someone designated as "Next of Kin" (see page 5) of a Sedgwick County employee. For Veterans of the Armed Forces, the serious injury or illness must have manifested itself before or after the member became a veteran and their discharge shall have occurred within five (5) years of the FML request.

#### C. Amount of Leave

1. An eligible employee can take up to twelve (12) workweeks of FML for the circumstances noted above in items B.1. through B.6. Leave may be taken intermittently or continuously. To determine the amount of eligible hours available to the employee, a rolling calendar year (12 month period) looking backward from the first date of FML usage will be used.
2. An eligible employee can take up to twenty-six (26) workweeks of FML for the circumstances noted in item B.6. for covered service member leave during a single 12-month period with the amount of remaining leave calculated from the date leave is first used. Leave maybe taken intermittently or continuously.

#### D. Types of Leave – Continuous, Intermittent or Reduced Work Schedule

1. Leave may be taken continuously, intermittently, or, in certain circumstances, as a reduced work schedule as directed by the employee's medical provider.
2. When medical treatment is foreseeable, it is the employee's responsibility to coordinate scheduling with their immediate supervisor and the health care provider **at least 30 days in advance** to minimize disruption to the County.
3. Intermittent Leave and/or Reduced Work Schedule – When medically necessary, leave may be taken intermittently, or by way of a reduced work schedule, for an employee's own serious health condition, or the serious health condition of a qualified family member. If necessary, Sedgwick County may temporarily transfer an employee to an alternative position for which the employee is qualified (with equivalent pay and benefits) to accommodate the recurring periods of leave.
4. Baby Bonding Leave – Employees taking leave for the birth of a child or the placement of a child via adoption or foster care must use their FML entitlement within 12 months after the birth or placement of the child. Policy 4.704 Paid Parental Leave requires that FML run concurrently. Paid Parental Leave will be utilized first prior to use of an employee's accrued sick, vacation or comp time. Paid Parental Leave provides for up to eight (8) workweeks of paid leave beginning with the baby's date of birth or the adoption/placement date. Concurrent tracking will occur provided the 12 workweeks within the rolling 12-month period has not been exhausted.
5. Military Caregiver Leave – An employee needing to care for a family member or covered service member/honorably discharged veteran encompasses:

- a. physical and/or psychological care; or
  - b. when the employee is needed to fill in for another person providing care or to arrange for third party care of the family member/covered service member.
  - c. Intermittent or reduced schedule leave may be used when other care is normally available for the family member.
6. Qualified Family Member: End of Life Care – Employees taking leave for a qualified family member must notify Human Resources and their supervisor immediately upon the death of the qualified family member. Consistent with Sedgwick County Policy 4.708 Bereavement Leave, the employee will receive the designated number of days of paid leave; however, the FML will end, effective with the date of the death. Employees are eligible to request a personal FML case, if needed.
  7. Qualified Family Member: Child over 18 – An employee whose child is incapable of self-care may be eligible for FML providing the child requires active assistance or supervision with regard to three or more “activities of daily living” or “instrumental activities of daily living” as substantiated by the child’s physician.

E. Use of Paid and Unpaid Leave:

1. Eligible accrued sick leave, vacation or compensatory time shall be utilized, in that order, except as exempted below in items E.2. and E.3. If an employee has less than twelve (12) workweeks of eligible accrued paid leave, the balance of the leave shall be taken as protected unpaid leave.
2. Each department may determine whether employees are eligible to make up work hours absent. An employee on intermittent FML may request the opportunity to make up missed hours from the supervisor. However, FML time missed during the scheduled workday will be designated as FML and will count toward the employee’s available FML entitlement, provided the employee’s compensation does not exceed the total number of scheduled hours for the workweek. At no time shall employees be required to make up time for absences designated as FML.
3. Withholding Portion of Accrued Paid Leave – Employees using FML for a qualifying family member’s medical condition, the birth of a child or the placement of a child via adoption or foster care have the option of retaining a maximum of forty (40) hours of eligible accrued paid leave (sick, vacation, compensatory time or a combination thereof). **The request must be submitted in writing to Human Resources prior to the leave balance being exhausted, preferably before taking leave, but no later than the projected leave end date.** Any accrued paid leave hours withheld will apply only to that FML case. The employee must contact Human Resources in writing if he/she wishes to cancel or change the original arrangement.
4. FML running concurrently with workers’ compensation.
  - a. FML-eligible employees, who are injured on-the-job and who are receiving workers’ compensation, may elect to have absences related to their treatment and recovery tracked and deducted from their total FML entitlement for job protection and benefits purposes.

- b. If the employee's injury is such that continuous leave is required, the absences can be designated as FML and any accrued paid time can be used to provide compensation and job protection during the initial seven (7) day waiting period. Subsequent absences, whether intermittent or continuous, will be tracked concurrently based upon the employee's normal work schedule.

F. Performing Work while on FML

1. An employee on FML may not perform work for Sedgwick County while reporting an absence for a FMLA-qualifying condition. This includes, but is not limited to: sending, reading, or responding to emails; returning or making phone calls; and/or performing any job-related tasks.
2. A manager or supervisor may contact the employee while on FML to obtain general work information, which does not require access to electronic files or documents or logging onto Sedgwick County's network. The only allowable exception would be for the employee to set an "Out of the Office" message for responding to/re-directing emails during their absence. This is considered "de minimus" work and is not compensated.
3. Employees may not return to work without submitting the "Return to Work Certification Form" to Human Resources prior to resuming job duties. Once an employee returns to work, the continuous leave shall end.

G. Secondary Employment while on FML

An employee on FML may work a second job as long as the employee meets the FML standard for leave from Sedgwick County. An employee must meet the policy requirements for a second job as listed in 4.300 Employment Policy.

H. Designation of Leave

1. FML may be designated retroactively by either the employee or the County in the circumstances listed below, up to thirty (30) days after the first day of the FML event. Accrued paid sick, vacation, compensatory time will apply.
  - a. If circumstances are such that the leave is unexpected; or
  - b. Because the employee is on sick or vacation leave for a FML purpose and has not advised the County of said purpose; or
  - c. If the certification paperwork includes absences within the 30-day period and it is for the same condition designated by the employee's physician, those absences can be covered.
2. At no time may leave be designated after the leave has ended, except as provided by law.

I. Consistent with FMLA regulations, it shall be the policy of Sedgwick County not to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right under the FMLA. This includes the prohibition of:

1. Discriminating or retaliating against an employee, or prospective employee, for having exercised or attempted to exercise any FMLA right;

2. Discharging or in any other way discriminating against any person, whether or not an employee, for opposing or complaining about any unlawful practice under the FMLA; or
3. Discriminating against any person, whether or not an employee, because that person has:
  - a. Filed any charge, has instituted, or caused to be instituted, any proceeding under or related to the FMLA;
  - b. Given, or is about to give, any information in connection with an inquiry or proceeding relating to any right under the FMLA; or
  - c. Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA.
4. Examples of prohibited conduct include:
  - a. Discouraging an employee from using FML;
  - b. Requesting that an employee perform work while on approved FML;
  - c. Manipulating an employee's work hours to avoid responsibilities under the FMLA;
  - d. Using an employee's request for or use of FML as a negative factor in employment actions, such as hiring, promotions, or discipline; or
  - e. Counting FML under "no fault" attendance policies.

J. Surveillance and Leave Investigation – If the County receives information that casts doubt upon the employee's proper use of FML, the County may use reasonable means to investigate the use of the leave, including surveillance. If an investigation finds intentional misuse of FML, employment may be terminated. Human Resources may also audit FML requests to ensure quality and accuracy.

#### 4. Definitions

- A. **Rolling Calendar Year** – A 12-month period measured backward from the first date an employee uses FML. Each time an employee requests FML, the remaining leave entitlement is any balance of the twelve (12) workweeks which has not been used during the preceding twelve (12) months.
- B. **Spouse** – As defined in accordance with applicable State Law.
- C. **Parent** – A biological, adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* to the employee when the employee was a child. This term does not include parents-in-law.
- D. **Son or Daughter** – A biological, adopted or foster child, stepchild, legal ward, or other persons who are under eighteen (18) years of age for whom the employee acts *in loco parentis*. Children eighteen (18) years of age or older, but incapable of self-care because of a mental or physical disability, are within the meaning of the definition, but will require verification from a licensed medical professional.
- E. **In Loco Parentis** – Those persons who provide day-to-day care or financial support to a child. Documentation to establish *in loco parentis* is required.

- F. **Next of Kin** (Current or Honorably Discharged Veteran service member only) – the nearest blood relative designated by the service member, but outside of the relationships listed above, are eligible for FML in the following order of priority, provided documentation to establish the relationship and/or authorization is submitted at time of request:
1. A blood relative who has been designated in writing by the service member as the next of kin for FMLA purposes;
  2. Blood relative who has been granted legal custody of the service member;
  3. Brothers and sisters;
  4. Grandparents;
  5. Aunts and uncles;
  6. First cousins.
- G. **Serious Health Condition** – Any illness, injury, impairment, physical or mental condition that involves:
1. Inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider;
  2. Incapacity and treatment – Incapacity period of more than three (3) consecutive calendar days and subsequent treatment or incapacity related to the condition. The subsequent treatments must be needed within thirty (30) days of the first day of incapacity and an inpatient visit to a health care provider must occur within seven (7) days of the first day of incapacity,
  3. Chronic conditions – Conditions that require periodic visits for treatment at least twice per year by a health care provider, continue over an extended period of time, and could cause episodic incapacity (e.g., asthma, diabetes, epilepsy) and absences;
  4. Permanent or long-term conditions – A period of incapacity due to a condition for which treatment may not be effective. (e.g., Alzheimer’s, a severe stroke, or the terminal stages of a disease); or
  5. Conditions requiring multiple treatments – Any period of absence to receive multiple treatments by a health care provider for 1) restorative surgery; or 2) a condition that would likely result in a period of incapacity of more than three (3) consecutive days if not treated, such as cancer (chemotherapy, radiation), severe arthritis (physical therapy), or kidney disease (dialysis).
- H. **Health Care Provider** – licensed medical doctors and osteopaths, podiatrists, dentists, clinical psychologists, clinical social workers, physician assistants, optometrists or chiropractors authorized to practice in the State, nurse practitioners and nurse-midwives authorized under State law and Christian Science practitioners.

## 5. Family and Medical Leave Procedures

- A. The implementing procedures for this policy are administered by the Division of Human Resources. Procedures may be revised upon review by the FMLA/ADA Specialist, Director of Work Environment, Chief Human Resources Officer and a representative from the County Counselor’s Office.

B. Copies of the Family and Medical Leave Policy and detailed FML Procedures shall be readily available to all County employees. All related documents shall be posted on e-line and will be available in designated locations, including the Division of Human Resources.

C. Employees who believe that their rights under the FMLA may have been violated may contact:

U.S. Department of Labor - Wage and Hour Division  
Gateway Tower II • 400 State Avenue, Suite 1010  
Kansas City, KS 66101-2417  
(913) 551-5721 OR Toll Free - (866) 487-9243