



Camden County, GA

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Master

Item Number: 10

Type: Regular Agenda

In Control: Board of County
Commissions

Agenda Date: June 15, 2010

Title: Revision of the Family & Medical Leave Act (FMLA) section of the
Camden County Personnel Policy

Attachments

Proposed revision to the FMLA section of the Camden County Personnel Policy

Title

Revision of the FMLA section of the Camden County Personnel Policy

Motions

Approval of this item is recommended by staff or other action as deemed necessary by the Board

Background

Currently, the only reference to FMLA leave in the Camden County Personnel Policy states, "*Family and medical leave shall be granted in accordance with the Family and Medical Leave Act of 1993*". This is an extremely vague statement that provides no detailed explanation regarding Camden County's application or process. Revising this policy would better ensure that each employee is aware of their rights and responsibilities with regard to the FMLA of 1993 and provide more consistent direction at a staff level for enforcing the FMLA of 1993. Clarification of this policy will provide directors/department heads, supervisors, and employees with guidelines to follow and will reduce the amount of guess work or assumption associated with this benefit.

Also, staff is recommending a change in the way the 12-month period is calculated. Currently, there is no written documentation for the way Camden County calculates the FMLA leave period, however, a calendar year calculation has been utilized as a general rule. By using the calendar year calculation eligible employees may be entitled to 12 weeks of FMLA leave each calendar year, which can allow for "stacking". Staff recommends that Camden County implement a rolling 12-month period. A rolling 12-month period allows an opportunity to "look back" at the previous 12 months to determine if any FMLA time was used and the remainder would be available regardless of when the FMLA period starts. This method of calculation would eliminate the "stacking" issue and ensure proper administration of the FMLA of 1993.

Staff Recommendation

Staff Recommends Approval of this item as submitted.

A. Camden County will comply with the Family and Medical Leave Act of 1993 ("FMLA") in accordance with the applicable Statutes Regulations, and Department of Labor Guidelines ("FMLA Statutes").

This FMLA policy is intended to explain the FMLA Statutes, and any terms used herein that are defined in the FMLA Statutes carry the same definitions as in the FMLA Statutes. This policy neither adds to nor subtracts from the rights and obligations under the FMLA statutes.

(1) Eligibility. Provided that Camden County employs at least 50 employees within 75 miles of the requesting employee's worksite, all full time and part time employees who have been employed by Camden County for one year (not including any period of employment preceding any break in service of at least seven (7) years) and who have worked at least 1,250 hours during the twelve-month period preceding a request for leave, are eligible for FMLA leave for the following reasons:

- (i) the birth of the employee's child and to care for the newborn child.
- (ii) the placement with the employee of a child for adoption or foster care,
- (iii) the care for the employee's spouse, child or parent with a Serious Health Condition,
- (iv) the care of the employee's own Serious Health Condition,
- (v) the care of a Covered Servicemember who is a spouse, child (any age), parent, or next of kin, and
- (vi) attention to matters arising from an Exigency of Deployment to Covered Active Duty of a spouse, child or parent.

"Covered Servicemember" means (a) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a Serious Injury or Illness; or (b) a veteran who is undergoing medical treatment, recuperation, or therapy, for a Serious Injury or Illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. "Veteran" means a person who served in the active military, naval, or air service, and who was discharged or released there from under conditions other than dishonorable.

"Serious Injury or Illness" means:

- (a) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed

Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(b) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves), means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

"Next of kin" means the nearest blood relative, not including spouse, parent, son, or daughter, in the following order of priority: A) Blood relatives granted legal custody of the Covered Servicemember, B) brothers and sisters, C) grandparents, D) aunts and uncles, E) and first cousins, unless the Covered Servicemember has specifically designated in writing another blood relative for purposes of this leave, which relative shall be deemed the only blood relative for this purpose. Documentation may be required to establish the qualifying relationship.

"Exigency of Deployment." An Exigency of Deployment is a call to Covered Active Duty in which one of the following exists:

(a) Short Notice deployment. Leave for up to 7 days may be taken if the servicemember receives 7 or fewer days notice of the deployment.

(b) Military events and related activities. Leave may be granted to attend official military ceremony or program or to attend family support or assistance programs and informational meetings sponsored or promoted by the military, military service organizations, or the American Red Cross, provided that all of the foregoing relate to the call to active duty.

(c) Childcare and school activities. Leave to arrange, in connection with the child (including stepchildren and adopted or foster children who are under the age of 18 or are age 18 or older and are incapable of self-care) of the servicemember, for alternative or changed childcare or schooling, to provide urgent or immediate care (as opposed to routine or regular care), or to attend meetings with school or childcare staff when the need to make such arrangements or provide such care arises from the call to active duty.

(d) Financial and legal arrangements. Leave to make or update financial arrangements in connection with the servicemember's absence or, during active duty status and for a period of 90 days following the termination of the servicemembers' active duty status, to act as the servicemembers representative in connection with obtaining, arranging, or appealing military service benefits.

(e) Counseling. To attend counseling by someone other than a healthcare provider for the employee, the covered servicemember, or the child of the servicemember in connection with the call to active duty.

(f) Rest and recuperation. Leave for up to 5 days in connection with each instance in which the servicemember is on short term leave for rest and recuperation.

(g) Post-deployment activities. Leave to attend arrival ceremonies, reintegration meetings and events, and any other official ceremony or program sponsored by the military within 90 days of termination of the servicemember's active duty status or to address issues arising from the servicemember's death.

(h) Additional activities. Leave to address other events which arise out of the call to active duty, provided that the Company and the employee agree that such leave qualifies as an exigency and agree on the timing and length of the leave.

"Covered Active Duty" is defined as:

(a) In the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

(b) In the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

(2) Required Use of Paid Leave. Employees will be required to apply all paid and unpaid leave (including annual leave time, compensatory time, etc.) concurrent with FMLA leave. Employees receiving pay for the use of paid leave will be required to comply with all of the requirements of Camden County's paid leave policies. An employee's accrued sick leave, workers' compensation and/or disability leave will not be applied towards FMLA leave if the employee is taking FMLA leave for any purpose other than that allowed under those policies and provided further that an employee will not be required to take paid leave concurrent with FMLA leave if the employee is receiving income benefits under a Camden County group disability plan or under workers' compensation law.

(3) Serious Health Condition. A Serious Health Condition means an illness, injury, impairment, or physical or mental condition that results in an incapacity (i.e., the individual is unable to care for themselves or unable to perform the essential functions of the job or, if a child, unable to attend school). A Serious Health Condition must also involve one of the following:

(a) Hospital Care. At least one night's stay in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment in connection with or consequent to the inpatient care.

(b) **Absence Plus Treatment.** A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition), that also involves either (1) treatment two or more times within 30 days of the onset of the incapacity, provided that the first in-person visit with the healthcare provider occurs within 7 days of the onset of incapacity, by, or under the supervision of or pursuant to referral by a Health Care Provider, or (2) treatment by a Health Care Provider on at least one occasion, provided that the first in-person visit with the healthcare provider occurs within 7 days of the onset of incapacity, which results in a regimen of continuing treatment under the supervision of a Health Care Provider. A regimen of continuing treatment does not include the taking of over-the-counter medications such as aspirin, antihistamines, or salves, or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a Health Care Provider.

(c) **Pregnancy.** Any period of incapacity due to pregnancy or for prenatal care.

(d) **Chronic Condition Requiring Treatment.** A chronic condition which (1) requires periodic visits (at least twice a year) for treatment by, or 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 (examples: asthma, diabetes, epilepsy).

(e) **Permanent/Long-term Conditions Requiring Supervision.** A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The individual must be under the continuing supervision of, but need not be receiving active treatment by, a Health Care Provider (examples: Alzheimer's, a severe stroke, or the terminal stages of a disease).

(f) Any period of absence to receive multiple treatments (including any necessary recovery period) by a Health Care Provider or by a provider of health care services under orders of, or on referral by, a Health Care Provider, 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 calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and kidney disease (dialysis).

B. **Notice Required of Employee.** When use of FMLA leave is foreseeable, an employee must provide 30 days advance notice to Camden County. If the employee becomes aware of the need for leave less than 30 days in advance, notice must be provided as soon as practicable. If an employee fails to provide 30 days advance notice, and it is determined that use of FMLA leave was reasonably foreseeable, then FMLA leave may be denied until 30 days have elapsed from

the date notice was given or should have been given. If additional FMLA leave is needed for qualifying reason previously approved, the employee should specifically refer to that reason or specifically request FMLA leave.

When scheduling medical treatment, the employee should consult with the immediate supervisor and department head regarding the schedule so as to minimize undue disruption caused by the employee's absence(s).

If a leave request in connection with an Exigency of Deployment is not accompanied by a copy of the military orders or other acceptable military documentation, such documentation will be requested in connection with the first request for leave for each deployment.

C. **Medical Certification.** If an employee is taking FMLA leave, the leave request should be accompanied by a medical certification of the need for leave on a form approved by Camden County. If the leave request does not include a medical certification, Camden County will request, in writing, that the employee provide medical certification to Camden County on or before the later of (1) fifteen (15) calendar days after the written request from Camden County for the certification, or (2) the commencement of the leave. Failure to submit the certification may result in denial of FMLA leave or delay of the leave until the certification is submitted. Additional medical opinions may be obtained by Camden County at its option and will be binding in accordance with the FMLA statutes.

Camden County requires that the employee provide subsequent medical certifications on the approved form. Generally, the re-certifications will be required no more often than every thirty (30) days. However, recertification may be required more or less frequently in accordance with the FMLA Statutes.

D. **Medical Benefits.** Camden County will continue all health care benefits for the duration of FMLA leave, provided the employee pays the employee's portion of the health care benefit premiums.

Any employee on FMLA leave will be required to continue to pay health care benefit premiums during the time the employee is on FMLA leave, by submitting to Camden County at the beginning of each month an amount equal to the monthly premiums that would have been deducted from the employee's pay were the employee not on FMLA leave. Camden County may cancel all health care benefits if the employee's premium payment is more than thirty days late if Camden County has provided fifteen days' written notice to the employee prior to cancellation. Camden County will continue health benefits during these thirty days.

If an employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, Camden County will be entitled under certain circumstances to recover the health care benefit premiums paid by Camden County during the period of unpaid FMLA leave. An employee must return to work for a minimum of thirty days in order to qualify as "returning to work."

E. (1) 12-Month Period. Eligible employees are entitled to take up to twelve weeks of FMLA leave during a rolling twelve month period measured backward from the date an employee uses any FMLA leave. An employee's entitlement to leave for a birth or placement for adoption or foster care expires at the end of the 12-month period beginning on the date of the birth or placement. Spouses who are both employed by Camden County are limited to a combined total of twelve weeks of leave during any 12-month period if the leave is taken for the birth of the employee's child or the placement of a child with the employee for adoption or foster care.

(2) An eligible employee is entitled to twenty-six (26) weeks of Covered Servicemember Leave on a per Covered Servicemember per injury/ illness basis, provided that no more than 26 weeks of FMLA leave for any reason (although no more than 12 weeks may be taken for a qualifying reason other than Servicemember Leave) may be taken during a single 12-month period as measured from the start of each such period of Covered Servicemember Leave. If both spouses intend to care for a Covered Servicemember and are both employed by Camden County, they are limited to a combined total of 26 weeks of leave if the leave is in connection with Covered Servicemember Leave and is limited as set forth in E.(1), above.

F. Reinstatement. On return from FMLA leave, the employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits pay, and other terms and conditions of employment, provided the employee is able to perform the essential functions of the position. 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 leave period.

G. Return to Work Certification. An employee with a Serious Health Condition who has been out on FMLA leave must provide certification that the employee is fit to return to work. The employee will be provided with a list of the essential functions of his/her job with Camden County's response to a request for FMLA leave. For certain positions, an employee on intermittent leave may be required to submit a fitness-for-duty certification every 30 days due to safety concerns. The employer may delay restoration until the certification is provided.

H. Intermittent and Reduced Schedule Leave. FMLA leave for the Serious Medical Condition of the employee or a family member, for an Exigency of Deployment, or Covered Servicemember, may be taken in increments or result in a reduced schedule of work, provided (except in the case of an Exigency of Deployment) the need for intermittent/reduced-schedule leave is certified by the Health Care Provider on the approved medical certification form. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations. In addition, if an employee takes intermittent or reduced-schedule leave, Camden County has the right to assign the employee to an alternative position with equivalent pay and benefits if the alternative position better accommodates the need for such leave. Regardless of the manner in which any *paid* leave is taken by an employee

pursuant to Camden County policies, leave may not be deducted from an employee's "bank" of FMLA leave in increments of time that are greater than one hour.

I. Termination of Employment. Unless otherwise required by law, employment with Camden County will normally terminate if the employee does not return to work after the maximum amount of FMLA leave has been taken.

J. Key Employees. At the time FMLA leave is requested, Camden County will designate an employee as a "key employee" if that employee is among the highest paid ten (10) percent of Camden County employees at the time the FMLA leave is requested.

(1) The key employee will be given a written notice at the time FMLA leave is requested, or as soon as practicable thereafter, that the employee qualifies as a key employee. In addition to informing the employee that he/she qualifies as a key employee, Camden County, will also inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits.

(2) When Camden County makes a determination that substantial and grievous economic injury to its operations will result if a key employee who has requested or is using FMLA leave is reinstated, Camden County will notify the employee as soon as practicable in writing of its determination, stating that it intends to deny restoration to employment on completion of the FMLA leave (Notice of Intent). This Notice of Intent will explain the basis for Camden County's determination and will provide the employee a reasonable time in which to return to work, taking into account the circumstances, such as the length of the leave and the urgency of the need for the employee to return.

(3) If an employee does not return to work in response to the Notice of Intent, the employee will continue to be entitled to maintenance of health benefits during the remainder of the FMLA leave, provided that the requirements of (C). above. are met, and Camden County will not recover its cost of health premiums.

(4) After the Notice of Intent is given to the employee, the employee will remain entitled to request reinstatement at the end of the leave period. Camden County will then again determine whether there will be substantial and grievous economic injury from reinstatement, based on the facts at that time.

(5) Any written notices given to a key employee must be either sent by certified mail or given in person.