

LAPEER COUNTY ROAD COMMISSION
PERSONNEL AND OPERATIONS POLICY MANUAL

Policy Subject: **Family & Medical Leave Act Policy**

Authorized by Board of Road Commissioner

Date:05/27/15

FAMILY & MEDICAL LEAVE ACT POLICY

The Road Commission affords eligible employees family or medical leave in accordance with the federal Family and Medical Leave Act (“FMLA”). All rights and obligations under the FMLA and this policy are interpreted according to the law.

- (a) General Provisions: An employee may be eligible for a job-protected, unpaid leave of absence for up to twelve (12) weeks each leave year if the employee:
1. has been employed for at least twelve (12) months (the months need not be consecutive);
 2. has worked for the Road Commission at least one thousand two hundred fifty (1,250) hours during the twelve (12) month period immediately preceding the leave; and
 3. is taking leave for a qualifying reason.

A leave year is defined as the “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

- (b) Reason for Leave: FMLA leave may be taken for any of the following reasons:
1. The birth of the employee’s child and in order to care for the child.
 2. The placement of a child with the employee for adoption or foster care.

3. To care for a spouse, child or parent who has a serious health condition.
4. A serious health condition that renders the employee incapable of performing the essential functions of his/ her job.
5. A “qualifying exigency” arising out of covered active duty or a call to covered active duty of a covered relation in the Armed Forces.
6. To care for a covered relation or next of kin who is a covered servicemember and has incurred a serious injury or illness in the line of duty while on active duty in the Armed Forces, including the National Guard or Reserves.

FMLA leave may not exceed 12 weeks per leave year, except where the leave is to care for an injured or ill service member, in which case an eligible employee may take up to 26 workweeks of leave during a single 12-month period to care for the service member. Leave to care for an injured or ill service member, when combined with other FMLA-qualifying leave, may not exceed 26 weeks in a single 12-month period. The entitlement to leave for the birth or placement of a child for adoption or foster care will expire twelve (12) months from the date of the birth or placement, regardless of when the leave starts. For example, an employee who requests a leave at the start of the twelfth (12th) month (of the twelve (12) month period from the date of birth or placement) is entitled to only four (4) weeks of FMLA leave. Spouses who both work for the Road Commission will be entitled to a combined 12 weeks of FMLA in a given leave year when leave is taken for birth of a child, placement of a child for adoption or foster care, or care of a parent with a serious health condition. Similarly, spouses who both work for the Road Commission may take only a combined 26 workweeks of leave to care for a covered servicemember with a serious injury or illness.

(c) Definitions:

A “child” includes a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is under 18 years old or who is over 18 and incapable of self-care because of a

physical or mental disability at the time the FMLA leave is to commence. (However, where leave is due to a qualifying exigency arising out of active duty or a call to active duty or to care for an injured or ill service member, there is no age limit on the child.)

A “parent” includes your biological, adoptive, step or foster parent or any other person who stood *in loco parentis* to you when you were a child. A parent does not include your spouse’s parent.

“Spouse” as defined in the FMLA, means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under State law for purposes of marriage in the State in which the marriage was entered into or, in the case of a marriage entered into outside of any State, if the marriage is valid in the place where entered into and could have been entered into in at least one State. This definition includes an individual in a same-sex or common law marriage that either (1) was entered into in a State that recognizes such marriages or, (2) if entered into outside of any State, is valid in the place where entered into and could have been entered into in at least one State.

“*In loco parentis*” is defined as including those with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may, nonetheless, stand *in loco parentis* to the child and be entitled to FMLA leave. Similarly, an employee may take leave to care for someone who, although having no legal or biological relationship to the employee when the employee was a child, stood *in loco parentis* to the employee when the employee was a child.

A “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. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three consecutive calendar days combined with at least two 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.

A “qualifying exigency” means short-notice deployment (notice of seven days or less), military events, child care and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities where the Road Commission and the employee agree.

“Covered active duty” means, 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, 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.

A “covered servicemember” is (1) a member of the Armed Forces, including 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 (2) 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 the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

A “serious injury or illness” is one that was incurred in the line of duty on active duty (or existed before the beginning of active duty and was aggravated by service in the line of duty on active duty) and that may render the servicemember medically unfit to perform duties of the member’s office, grade, rank or rating. With respect to a veteran who was a member of the Armed Forces at any time during the period of five years preceding the date on which the veteran undergoes medical treatment, recuperation or therapy, a serious injury or illness means a qualifying injury or illness that was incurred in the line of duty on active duty or existed before the beginning of active duty and was aggravated by service in the line of duty and that manifested itself before or after the member became a veteran.

- (d) Use of Paid Leave: In general, FMLA leave is unpaid. However, the Road Commission requires that employees substitute any accrued paid leave for unpaid leave. If leave is requested for an employee's own serious health condition, the employee must use all of his/her accrued paid vacation leave, sick leave or personal leave. If leave is requested for any of the other reasons listed above, the employee must use all of his/her accrued paid vacation or personal leave. The terms and conditions of the Road Commission's normal accrued leave policies apply. Upon exhaustion of the paid leave, any portion of the remaining leave available under FMLA, if any, will be unpaid. The paid leave used is counted as part of the twelve (12) week FMLA period. An employee's entitlement of up to 12 workweeks of FMLA leave will run concurrently with any workers' compensation or temporary disability absence as long as the criteria for a serious health condition is met.
- (e) Notice and Procedure for Requesting Leave: An employee intending to take family or medical leave that is foreseeable, such as because of an expected birth or placement, or because of a planned medical treatment, must notify the Road Commission at least thirty (30) days before the leave is to begin. If the need for a leave, or the timing of the leave, is not foreseeable, the employee must provide written notice as soon as practicable and generally must comply with the Road Commission's normal call-in or reporting practices and procedures. Failure to give the required notice may result in the delay of the leave. If the leave is due to planned medical treatment, the employee must make a reasonable effort to schedule the treatment to minimize disruption to the Road Commission. On the basis of the information provided by the employee, the Road Commission will designate the leave, paid or unpaid, as FMLA leave. The Road Commission's designation of leave as FMLA-qualifying leave will be made before the leave starts, or before an extension of the leave is granted, unless the Road Commission is not given sufficient information as to the employee's reason for taking the leave until after the leave commences.
- (f) Medical, Family, and Qualifying Exigency Certification: When the leave is necessitated by the employee's own serious health condition, or that of his/her spouse, child or parent, or by a serious injury or illness of a covered service member, the employee must provide the Road

Commission with appropriate medical certification by a health care provider on forms provided by the Road Commission, verifying the need for such leave. Employees generally will have 15 calendar days to provide the required certification. Also, if the leave is for birth, placement of a child for adoption or foster care, or care of a covered relation, the Road Commission may require the employee to provide reasonable documentation or a statement confirming the family relationship. In addition, if the employee is requesting leave for a qualifying exigency related to military service, the employee may be required to provide an appropriate certification. Failure to timely provide the requested medical certification or other documentation may result in a delay or denial of the leave. The Road Commission may require the employee to obtain a second medical opinion, at the Road Commission's expense. The second health care provider will be chosen by the Road Commission, but may not be employed on a regular basis by the Road Commission. If the opinion of the first and second health care provider conflict, the Road Commission may require a third opinion, again at the Road Commission's expense, from a health care provider mutually agreed upon by the Road Commission and the employee. The third opinion shall be final and binding. (Second and third opinions will not be requested for a covered servicemember's serious injury or illness, however.)

Notice: The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to requests for medical information. "Genetic information" as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

- (g) Reporting During Leave and Upon Return From Leave: The Road Commission may require periodic medical re-certification from the employee during the leave period, but usually not more often than every

thirty (30) days and only in connection with an absence by the employee. The Road Commission may request re-certification more often if:

1. The employee requests a leave extension.
2. The circumstances described by the original certification have changed significantly (e.g. duration, nature of the illness).
3. The Road Commission receives information which casts doubt upon the continuing validity of the original certification.

Employees on an approved FMLA leave must report to the Road Commission, at reasonable intervals designated by the Road Commission, regarding his/her status and intent to return to work upon conclusion of the leave. If the circumstances precipitating the need for an FMLA leave change while an employee is on leave, the employee must promptly notify the Road Commission in writing of those changes, generally within two (2) business days. If the leave is necessitated by the employee's own serious health condition, the employee will be required, before his/her return to work, to provide a certificate of fitness to return to work, which may address the employee's ability to perform the essential functions of the job, at the employee's expense. A fitness to return to work certificate will not be required if the leave was taken on an intermittent or reduced schedule basis, unless performance of the job raises a significant risk of harm to the employee or others. Failure to timely provide the above status reports, re-certifications or fitness to return to work certificates may result in the delay or denial of leave, or restoration to the employee's position.

- (h) Intermittent and Reduced Schedule Leave: FMLA leave can be taken intermittently or on a reduced work schedule when there is a medical necessity and with the approval of the Road Commission. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the Road Commission operations. Leave for qualifying exigencies may also be taken on an intermittent basis. If the leave is unpaid, the Road Commission will reduce the employee's pay as permitted by law based upon the amount of time actually worked. In some situations, while an employee is on intermittent or reduced

schedule leave, the Road Commission may temporarily transfer the employee to an available alternative position (with equivalent pay and benefits) that better accommodates the leave request. Intermittent or reduced schedule leave to care for a newborn child or child placed with the employee for adoption or foster care requires prior consent of the Road Commission (unless the leave is due to a serious health condition).

- (i) Benefit Coverage During Leave: During a period of family or medical leave, an employee will be retained on the Road Commission's health plan under the same conditions that applied before the leave commenced. To continue health coverage, the employee must continue to make any contributions that he/she made to the plan before taking leave. Failure to timely pay the employee portion of the premium may result in termination of coverage, provided the employee is notified in advance that coverage will lapse. If the Road Commission pays the employee portion of any elective benefit premium or group health premium during the leave, the Road Commission will seek reimbursement from the employee when the employee returns to work.

Although an employee on an approved leave of absence pursuant to this policy will continue to be covered under the Road Commission's then current applicable group hospital/medical plan, an employee who fails to return to work at the end of the twelve (12) week period will be required to repay the Road Commission for the cost of the Road Commission-paid benefits during any portion of the FMLA leave that is unpaid unless said failure to return is the result of the continuation, recurrence, or onset of a serious health condition, or continuation, recurrence, or onset of a covered service member's serious injury or illness which would entitle the employee to FMLA leave or other circumstances beyond the control of the employee.

- (j) Restoration to Employment Following Leave: An employee eligible for family and medical leave will be restored to his/her same position or a position with equivalent pay, benefits and other terms and conditions of employment at the end of the FMLA leave. A restored employee has no greater entitlement to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the leave period. Thus, an employee is not entitled to reinstatement if,

because of a layoff, reduction in force or other reason, the employee would not be employed at the time job restoration is sought.

After 12 weeks, the FMLA provisions regarding job restoration do not apply. If the leave exceeds 12 weeks, the employee's right to job restoration and/or benefits, if any, will be determined by the Road Commission's existing policies and in accordance with any applicable laws, including the Americans with Disabilities Act. The failure of an employee to return to work upon the expiration of a leave of absence will subject the employee to immediate termination unless an extension is granted. An employee who requests an extension of family leave or medical leave must submit a request for an extension, in writing, to the Road Commission. This written request should be made as soon as the employee realizes he/she will not be able to return at the expiration of the leave period. If the Road Commission grants an extension of family or medical leave beyond the twelve (12) weeks of leave required by law, the additional leave period will be without pay or benefits provided the employee has no additional accrued paid leave to exhaust.

- (k) Additional Information. The FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under the FMLA or discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA. An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer. FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights. If you have any questions regarding this policy, please contact _____.

The Road Commission reserves the right to modify this policy when circumstances warrant modification, or to change any provision of this policy as determined by the Road Commission in its discretion, consistent with the FMLA and any other applicable law.

