

Unpaid Leave of Absence

Objective:	To establish procedures for leave of absence requests for County employees.	Policy/Procedure Number:	03-16
Reference: (All applicable federal, state, and local laws)	Civil Service Rules for Tompkins County; Agreement between the County of Tompkins and Tompkins County Collective Bargaining Units; New York State Civil Service Law; U.S. Department of Labor, Family and Medical Leave Act of 1993 (FMLA)	Effective Date:	January 12, 1981
Legislative Policy Statement:		Responsible Department:	Human Resources
General Information:		Modified Date (s):	June 28, 1988; October 6, 2020
		Resolution No.:	2020-172
		Next Scheduled Review:	October 2025

I. Definitions:

Covered Service Member - A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or is in outpatient status or is on the temporary disability retired list for a serious injury or illness.

Family and Medical Leave Act (FMLA) - Entitles eligible employees to take unpaid, protected leave for specified family and medical reasons with continuation of health insurance coverage under the same terms and conditions as if the employee had not taken leave.

Protected Leave - A leave of absence in which an employee's employment status, position, or wages are protected by State or Federal laws (i.e., FMLA, Military Leave, ADA, etc.).

Serious Health Condition - An illness, injury, impairment or physical or mental condition that involves one of the following:

1. *Inpatient care*: Any period of incapacity or treatment connected with inpatient care (i.e. an overnight stay) in a hospital, hospice or residential medical care facility including any period of incapacity, treatment, or recovery.
2. *Pregnancy*: Any period of incapacity due to pregnancy, prenatal care, or childbirth.
3. *Chronic Conditions Requiring Treatment*: Any period of incapacity or treatment for a chronic serious health condition that requires periodic visits for treatments by a healthcare provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity.
4. *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 employee or family member must be under the continuing supervision of, but need not be receiving active

treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

5. *Multiple Treatments*: Any period of absence to receive multiple treatments, including recovery, by a health care provider.

6. *Serious Injury or Illness of a Service Member*

Note: Substance Abuse Treatment that meets the conditions of a "serious health condition" may qualify as FMLA Leave. Absence because of the employee's use of a substance or alcohol, rather than for treatment, does not qualify for FMLA leave.

Unpaid Leave of Absence - All absent time in excess of five (5) consecutive working days not paid for by Tompkins County.

Unprotected Leave - A leave of absence in which an employee's employment status, position, or wages are not protected by State or Federal laws (i.e., non-FMLA qualifying medical leave or leave for reasons other than for medical purposes)

II. Policy:

- A. An unpaid leave of absence may be granted for specified family or medical reasons (FMLA) after all benefit time (vacation, sick, personal, compensatory time off, disability, and other leaves of absence to which the employee is entitled by law) has been exhausted. FMLA leave may not exceed twelve (12) weeks during any "rolling" 12-month period.
- B. Leaves of absence under the FMLA will run concurrent with any other medical leaves of absence (both occupational and non-occupational).
- C. An unpaid leave of absence may be granted for non-qualifying FMLA or non-medical reasons (Non-FMLA) after all benefit time (vacation, personal, compensatory time off), except sick or disability leave, have been exhausted. A non-FMLA related leave of absence may not exceed one (1) year.
- D. Where an unpaid leave of absence has been granted for a period which aggregates one (1) year, a further leave of absence without pay shall not be granted unless the employee returns to the same position and serves continuously therein for three (3) months immediately preceding the subsequent leave of absence.
- E. Absence on leave for more than one (1) year shall be deemed the equivalent of a resignation from service upon the date of commencement of such absence. In an exceptional case, the Commissioner of Human Resources or designee may for good cause shown waive the provisions of this rule to permit an extension of the leave of absence for up to an additional one (1) year period. In no case may such leave of absence exceed in aggregate two (2) years from the date of commencement of such leave.
- F. An unpaid leave of absence, not to exceed four (4) years, shall be granted to an Employee who is a veteran of the armed forces of the United States, providing such leave of absence is for the purpose of taking courses under the educational benefits provided for in Title 38, United States Code, or under a New York State Board of Regents War Service Scholarship, Education Law, Section 614. An employee taking such leave shall be reinstated to their position, provided application for such reinstatement is made within sixty days (60) days after the termination of the courses of study.

- G. An employee is not entitled to time off with pay in excess of those benefits specifically allowed in an employee's contract.
- H. Anniversary dates shall not be adjusted for employees who take an unpaid leave of absence. Vacation, sick, personal, and disability time credit will not accumulate during the unpaid leave of absence. An employee on unpaid leave of absence may not claim bereavement pay or holiday pay.
- I. For employees absent during their first year of employment, any period of unpaid leave in excess of thirty (30) days, will not be counted toward the probation period in determining their movement to the "Work Rate" of pay for the salary grade of their title.
- J. Tompkins County will provide the employee with a U.S. Department of Labor "Notice of Eligibility and Rights and Responsibilities" within five (5) business days of notification for the need for FMLA leave, absent extenuating circumstances.

III. Procedure:

A. Eligibility

1. *FMLA (Protected Leave)*

Only *eligible* employees are entitled to take FMLA leave. An eligible employee is one who:

- Has worked for the County for at least twelve (12) months (does not have to be consecutive). The only exception is if the employee has a break in service of seven (7) years or more, in which case the time worked prior to the break is not counted; and
- Has at least 1,250 hours of service with the County during the 12-month period immediately preceding the leave (Paid leave and unpaid leave, including FMLA leave, are not included in calculating the hours worked).

2. *Non-FMLA (Unprotected Leave)*

Employees who do not qualify for FMLA leave *may* be eligible for Non-FMLA unpaid leave if the employee:

- Has a qualifying reason as defined under FMLA, but has exhausted leave available under FMLA or does not meet the 1,250-hour requirement; or
- Has a qualifying reason as defined under FMLA, but has not met the twelve (12) month employment or 1,250 hours minimum to qualify for leave under FMLA; or
- For other non-medical related events but has completed their initial probationary period and has "permanent" employment status with the County.

B. Covered Leave Types

1. *FMLA*

FMLA provides that eligible employees may be entitled to unpaid scheduled leave for continuous or intermittent absences due to any of the following “qualifying reasons” for leave:

a. Parenting Leave

- Leave is available for the birth of an employee's child and to care for the newborn child after birth, or placement of a child with the employee for adoption or foster care and to care for the child.
- Leave must occur within the first year after the event.
- If both parents are employed by the County, leave is limited to a combined total of twelve (12) work weeks during a “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.
- Leave may be granted on a continual or intermittent basis. A reduced schedule may be available if medically necessary.

b. The employee's own serious health condition

- Medical certification is required.
- Leave may be granted on a continual or intermittent basis. A reduced schedule may be available if medically necessary.
- Leave for conditions covered under worker's compensation shall also be designated as FMLA leave when the condition meets FMLA requirements.

c. To provide care for the employee's spouse, child, or parent with a serious health condition

- Medical certification is required.
- Leave may be granted on a continual or intermittent basis. A reduced schedule may be available if medically necessary.
- Child includes biological, adopted, stepchild, foster child, legal ward, or a child of a person standing in loco parentis. The definition of child is limited to children under the age of eighteen (18) or children who are incapable of self-care because of a mental or physical condition. “In Loco Parentis” means a person with the day-to-day responsibilities to care for and provide financial support to a child and need not have a biological or legal relationship. Parent does not include “in-laws”.
- Parent includes biological or adoptive parent or a person who stood “in loco parentis” when the employee was a child.
- If both parents are employed by Tompkins County, leave to care for the family member is limited to a combined total of (twelve) 12 work weeks during a “rolling” 12-month period measured backward from the date an employee uses any leave.

d. For any qualifying need related to the foreign deployment of a military member who is the employee's spouse, child, or parent

- Certification of the qualifying need is required.
- The qualifying need must be one of the following: (i) short-notice deployment, (ii) military events and activities, (iii) child care and school activities, (iv) financial and legal arrangements, (v) counseling, (vi) rest and recuperation, (vii) post-deployment activities and (viii) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

e. Military Care Giver: An employee eligible for FMLA may take up to twenty-six (26) work weeks of unpaid leave during a "single 12-month period" to care for a covered service member with a serious injury or illness.

- Medical certification is required.
- To be eligible for military caregiver leave, an employee must be the spouse, parent, child or next of kin of a covered service member or covered veteran.
- The County may request documentation for confirmation of family relationship.
- The "single 12-month period" begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends twelve (12) months after that date.
- Leave taken for any FMLA reason counts towards the 26-week entitlement.
- Leave does not carry forward. If an employee does not take all of 26 work weeks of leave entitlement to care for a covered service member during the "single 12-month period," the remaining part of the 26 work weeks of leave entitlement to care for the covered service member is forfeited.

2. *Non-FMLA*

a. Tompkins County provides that eligible employees may request an unpaid scheduled leave absences due to reasons that do not qualify under FMLA.

b. Medical certification or additional documentation will be requested under the same conditions and in the same manner as FMLA qualified leaves.

c. Intermittent leave is contingent upon medical necessity and County approval.

C. Requesting an Unpaid Leave

1. An unpaid leave of absence or leave extension request must be in writing and submitted to the employee's Department Head with a copy submitted to the Commissioner of Human Resources, generally **thirty (30) calendar days** in advance when the leave is foreseeable or as soon as reasonably practical. The request should indicate the reason, start date, and the length of leave requested.

Note: If notice cannot be given, emergency FMLA leave may be approved based on verbal or email communication with the Department Head or Department of Human Resources and any information needed may be mailed to/from the employee. Any documentation required may be completed after the FMLA leave begins.

2. The Department Head and Commissioner of Human Resources or designee shall review and act upon a request for unpaid leave in consideration of the following factors:
 - a. The purpose for which the leave is requested;
 - b. The length of time the employee will be away;
 - c. The effect the leave will have on the ability of the department to carry out its responsibilities; and
 - d. The quality of the employee's performance prior to the submission of the request.
3. Unpaid leaves less than one (1) full work week may be approved by a Department Head. All unpaid leaves in excess of one (1) full work week must be approved by the Department Head and concurred with by the Commissioner of Human resources or designee.
4. Once a request is made, the Department of Human Resources has **up to ten (10) business days** from the receipt of a request to provide written notification to the employee of whether or not an unpaid leave request has been approved or denied.
5. If a leave of absence request is approved, the Department Head must complete and submit a *"Supplementary Payroll Certification and Report of Personnel Change" form (MSD428)* to the Department of Human Resources. The form shall indicate a "Leave of Absence" and noting the "unpaid status" change.
6. An employee on an approved leave must report periodically about their status and intent to return to work as required by their Department Head.

D. Medical Certifications or Additional Documentation

1. The Department of Human Resources will require medical certification by an employee's health care provider for any medically related leave requests in excess of one (1) full work week.
2. Employee's must provide requested certification or documentation within **ten (10) business days** of the initial request (unless there is reasonable explanation or the delay) to the Department of Human Resources.
3. The County reserves the right to require second or third medical opinions

(at the County's expense) and periodic recertification of a serious health condition. Second and third opinions are not permitted for recertification, a release to return to work (fitness-for-duty certification) or certification regarding care for a covered service member.

4. If additional documentation or medical certification is required, the Department of Human Resources has **up to ten (10) business days** from when the documentation was received to provide written notification to the employee of whether or not unpaid leave request has been approved or denied.
5. Tompkins County may contact an employee's health care provider for purposes of clarification and authentication of the medical certification, whether initial certification or recertification, after the County has given the employee an opportunity and appropriate time to cure any deficiencies. A Human Resources professional shall make such contact.
6. Failure to comply with the above-mentioned requirements may result in denial or delay of leave, in which case the employee's leave of absence would be unauthorized.

Note: Records and documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members will be maintained by the Department of Human Resources as confidential medical records in separate files/records from the employee's personnel file.

E. Benefit Continuation

1. *FMLA:*

Health insurance coverage shall be continued for the duration of an unpaid leave of absence due to medical reasons or reasons qualifying under FMLA.

2. *Non-FMLA:*

- a. If the unpaid leave is other than for medical reasons or does not qualify under FMLA, the employee may continue health insurance coverage by paying the total premium due to the County on a regularly scheduled basis.
- b. If an employee does not continue paying premiums as required to maintain health insurance coverage in good standing, such coverage will terminate effective the first (1st) of the month following the commencement of the leave of absence.
- c. Employee's will have the opportunity to re-enroll in a County health insurance plan upon their return to work, if applicable.

F. Returning to Work

1. *FMLA:*

An employee who is reinstated from an unpaid leave of absence will be returned to their original job or to an equivalent job with equivalent

status, pay, benefits, and other terms and conditions of employment.

2. *Non-FMLA:*

- a. Employees who take a non-FMLA Unpaid Leave do not have job restoration rights. However, Tompkins County will generally reinstate the employee to the same position or a position with equivalent status, pay, benefits and other employment terms upon the employee's return before or at the end of the approved leave period.
 - b. In the event Tompkins County will not be able to restore the employee, the employee will receive written notice from the Department of Human Resources.
3. When leave is granted for an employee's own health condition, the employee will be required to provide a "Physician's Release" before returning to work.
 4. If an employee on leave for personal medical reasons is released to return to work sooner than the expected return date listed on their leave request, the employee must notify their Supervisor within **two (2) business days** of receiving the release from their health care provider.
 5. If an employee on leave for personal medical reasons is released to return to work with restrictions, their Department Head in consultation with the Department of Human Resources to determine whether the restriction can be reasonably accommodated.
 6. Employees are expected to be able to return to work by the end of their approved leave. Failure of the employee to return upon the expiration of the leave may constitute a separation from employment which is not subject to appeal.
 7. Upon an employee's return to work, the Department Head must complete and submit a "*Supplementary Payroll Certification and Report of Personnel Change*" form (MSD428) to the Department of Human Resources. The form shall indicate the "Reinstatement".