

## **APPENDIX A**

### **FAMILY AND MEDICAL LEAVE POLICY**

The federal Family and Medical Leave Act of 1993 (FMLA) entitles eligible employees to take up to twelve (12) weeks (twenty-six (26) weeks to care for a covered service member as set forth below) of unpaid, job-protected, leave for certain family and medical reasons. This policy sets forth our policies and procedures with regard to family and medical leave under FMLA.

#### **Eligibility**

In order to qualify for FMLA leave, an employee must be a non-ministerial employee and have been employed with the Diocese for at least twelve (12) months (these twelve (12) months of employment need not be consecutive and any employment with the Diocese within the last seven (7) years will be counted toward the twelve (12) month requirement) and have worked at least 1,250 hours during the 12-month period preceding the start of the leave.<sup>1</sup>

#### **Reasons for Leave**

An eligible employee may take up to twelve (12) weeks of unpaid FMLA leave for the following reasons:

- (1) to care for the employee's child after birth, or placement for adoption or foster care;
- (2) to care for the employee's spouse, son, daughter, or parent who has a serious health condition;
- (3) for the employee's own serious health condition that makes the employee unable to perform the functions of the employee's job.
- (4) to care for an employee's spouse, son, daughter, parent, or next of kin who is, a member, or veteran discharged within the five year period before the need for leave arises (excluding dishonorably discharged veterans), of the Armed Forces, including a member or veteran of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or in the case of current members, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness;

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<sup>1</sup> The information in this Policy highlights the Diocese's FMLA policy and the rights and obligations of employees and employers under the Act, which are covered in over forty pages of federal regulations. This information is intended to be a short statement of the Diocese policy and these lengthy regulations, and in any particular case, the precise rights and obligations of employees and the Diocese will be governed by the terms of this Policy and the law itself. Nothing in this statement is intended to, or should be interpreted as, granting employees rights beyond those that the law itself provides.

- (5) for certain qualifying exigencies arising out of an employee's spouse, son, daughter, parent, who is a member of the Regular Armed Forces, the National Guard, the Reserves (Army, Navy, Marines, Air Force, or Coast Guard), or a retired member of Regular Armed forces or Reserve, who is on or called to covered active duty .

### **Amount of Leave/Calculation**

#### **A. Pregnancy, Serious Health Condition or Qualifying Exigency**

An eligible employee can take up to 12 weeks of unpaid FMLA leave during a 12-month period. The Diocese will use a calendar year system for counting how much FMLA leave an eligible employee is entitled to. That means that eligible employees are permitted 12 weeks of unpaid FMLA leave during a calendar year.

#### **B. Leave Relating to A Covered Service member's Injury or Illness**

An employee taking leave to care for the employee's spouse, son, daughter, parent, or next of kin who is a member or veteran discharged within the five year period before the need for leave arises (excluding dishonorably discharged veterans), of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, or in the case of active members, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness can take up to 26 weeks of unpaid leave in a single 12-month period. The single twelve month period will begin on the first day leave is taken and will expire 12 months thereafter. Each time the employee requests leave we will look back to the first date leave was requested and will determine how much, if any, leave is available.

The maximum amount of leave an employee can take in one year is 26 weeks, regardless of the reason or number of reasons. For example, if an employee has a serious health condition which requires the employee take 12 weeks of FMLA leave, and later has to care for a service member's injury or illness, the employee would be entitled to 14 weeks (26-12) of leave to care for the injury or illness.

### **Available Paid Leave**

Leave taken under FMLA is generally unpaid leave. If the employee has any accrued paid leave available (such as paid vacation, sick leave, etc.) that would apply to the absence, the employee must use that leave, and the amount of paid leave used up will be counted against the employee's FMLA entitlement.

Leave may be taken on a continuous basis (that is, a certain number of days or weeks in a row). Additionally, when medically necessary, for leaves involving serious health conditions or care for a service member's injury or illness, leaves may also be taken on an intermittent basis (that is, leave taken in separate blocks of time due to a single qualifying reason), or on a reduced schedule basis (that is, a leave schedule that reduces the usual number of hours per workweek or hours per day). An employee requesting intermittent leave or leave on a reduced schedule must

fulfill all of the obligations that are described in this statement (for example, the advance notice requirements, request for leave of absence forms, medical certification, etc.). The employee must also advise the Diocese of the reasons why the intermittent/reduced schedule is necessary and of the schedule for treatment, if applicable. The employee and the Diocese must then attempt to work out a schedule which meets the employee's needs without unduly disrupting the Diocese's operations, subject to the approval of the health care provider.

Likewise, whenever the employee requests leave for planned medical treatment (whether on an intermittent reduced schedule or continuous basis), the employee must consult with the Diocese and make a reasonable effort to schedule the leave so as not to disrupt unduly the Diocese's operations, subject to the approval of the health care provider. Employees are ordinarily expected to consult with the Diocese prior to scheduling treatment in order to work out a treatment schedule which best meets the needs of both the Diocese and the employee.

### **Required Notice**

If the need for the leave is foreseeable, such as the expected birth or placement for adoption of a child, or for planned medical treatment, the employee must give the Diocese at least thirty (30) days' notice. If the need for leave is unforeseeable, the employee must give notice as soon as practicable (which generally means at least verbal notice to the Diocese the same day or within one business day of learning of the need to take FMLA leave). Notice shall be given according to the Diocese's normal call-in procedure; failure to follow the normal call-in procedure may result in the denial of leave which may subject the employee to disciplinary action, including discharge. When the employee requests FMLA leave, or in the case of unforeseeable leave, as soon as possible thereafter, they will be given a form entitled Rights and Responsibilities.

The notice must contain sufficient information for the Diocese to understand that the employee needs leave for FMLA-qualifying reasons: the employee must explain the reasons for medical leave so as to allow the Diocese to determine whether the reason is an FMLA-qualifying reason. In the case of leave related to a service member, whenever possible, the employee should inform the Diocese of the name and title of the service member and the reason the leave is necessary. Notice should also include the anticipated timing and duration of the requested leave. If the employee fails to give the proper notice, we may treat the leave as leave which is not protected by FMLA, which may subject the employee to disciplinary action, including discharge.

After the initial request for FMLA leave, in each subsequent request the employee must specifically reference either the qualifying need for leave or the need for FMLA leave. Failure to provide this information may lead to the Diocese treating the leave as leave which is not protected by FMLA, which may subject the employee to disciplinary action, including discharge.

## **Certification**

### **Serious Health Conditions**

If the employee requests FMLA leave because of his or her serious health condition, or to care for a family member with a serious health condition, the employee will be required to provide medical certification of the need for the leave. The medical certification form, which the Diocese will provide, must be completed by a health care provider and returned within 15 days. If the Diocese has reason to doubt the validity of the medical certification, it may require the employee to get a second opinion. The Diocese may also require medical recertification during the period of an employee's FMLA leave.

### **Service member Leave**

If the employee requests FMLA leave to care for a service member or for qualified exigencies the employee will be required to provide certification validating the need for leave. The employee will be provided with a certification form which must be completed. The following types of information may be required: copies of the service member's active duty orders and appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party; certification completed by an authorized health care provider or a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family. The medical certification form must be completed and returned within 15 days.

### **General Procedure**

Regardless of the type of FMLA leave, the following procedure applies to FMLA requests: At the time of the request or shortly thereafter the Diocese will provide the employee with the appropriate certification form, depending on the type of leave requested. As stated above, the form must be returned within 15 days. In the event the employee fails to provide medical certification within 15 days, the Diocese may treat the leave as leave which is not protected by the FMLA.

When the leave is foreseeable and at least 30 days notice has been provided, the employee should submit the medical certification before leave begins. When this is not possible, or when the leave is not foreseeable or the employee has not provided 30 days notice, the employee must submit the certification within fifteen days after the employee is notified of the requirement to submit the certification (unless it is not practicable under the particular circumstances to do so despite the employee's diligent good faith efforts, in which case, the notice must be provided as soon as is reasonably possible under the particular facts and circumstances).

In the case of foreseeable leave, failure to submit a required medical certification within the fifteen (15) day period may result in a delay or in a denial of leave until the certification is provided, and may cause the employee's absence to be considered as unexcused, which may

subject the employee to disciplinary action, up to and including discharge. In the case of leave that is not foreseeable, failure to provide a required medical certification within fifteen (15) days after the requirement to submit the certification is sent to the employee, or within a reasonable time under the pertinent circumstances, may result in a delay or in denial of the employee's continuation of FMLA leave and may cause the absence to be considered as unexcused which may subject the employee to disciplinary action up to and including discharge.

Once the certification has been provided the Diocese will determine whether you are entitled to FMLA leave. The Diocese will provide you with a designation form within 5 days of you providing the information necessary for certification. This form will notify you if the leave request is covered by FMLA, if more information is necessary before a decision can be made, or, if the leave is not covered the reason why it is not covered. If more information is necessary, the employee must provide the additional information necessary within 15 days of the return of the designation form. Failure to provide the necessary information may result in the Diocese treating the leave as not protected by the FMLA.

### **Fitness For Duty Report**

At the end of an FMLA leave which is taken because of an employee's own serious health condition, the Diocese may require the employee to provide certification from the health care provider that the employee is able to resume work. The designation form provided by the Diocese will inform the employee if a fitness for duty report is going to be required. Along with the designation form the employee will be given the essential functions of the employee's job and the return to work certification must address those essential functions. The Diocese may deny the employee reinstatement to work until the employee submits the certification.

Additionally employees on intermittent leave who poses a reasonable safety concern may be required to submit a fitness for duty form not more than once every 30 days. The designation form provided by the Diocese will indicate whether a fitness for duty certification is required and how often one will be required. The Diocese may deny the employee reinstatement to work until the employee submits the certification.

### **Reinstatement**

Upon return from a leave required by the Act, unless a job elimination has occurred which would have terminated the employee's job or placed him/her in a different job, an employee taking family or medical leave under the Act (not exceeding 12 weeks) will generally either be restored to his/her prior position or to an equivalent one in terms of pay, benefits, responsibilities and authority. In certain circumstances, job restoration may be denied to certain highly compensated "key" employees if necessary to avoid substantial and grievous economic injury.

### **Maintenance/Accrual of Benefits During Leave**

An employee taking FMLA leave is entitled to maintain any employment benefits, other than the paid and unpaid leave required to be used, that the employee had accrued prior to the

date upon which leave began. During any period of unpaid FMLA leave, employees will not accrue personal leave, sick leave, or vacation leave. Employees who return to work after a FMLA leave will not lose any seniority or service credit eligibility. Unpaid FMLA leave will be treated as continuous service (i.e., no break in service) for all purposes, including the employee's vesting and eligibility to participate in retirement plans.

### **Health Insurance During FMLA Leave**

During FMLA leave, an employee will be maintained on the Diocese's health insurance plan (if any exists) under the same conditions that applied before leave began. To continue health insurance coverage, the employee must continue to make any contributions that he or she made before taking leave. Health insurance coverage may be cancelled if the employee's premium payment is more than 30 days late.

If the employee fails to return to work after his or her FMLA entitlement runs out, the Diocese may recover from the employee the Diocese's share (if any) of health insurance premiums paid during the leave. In that situation, the premiums paid by the Diocese during the leave are a debt owed by the non-returning employee to the Diocese, and the Diocese may recover that debt through deduction from any sum due to the employee, or through legal action.

### **School Employees – Leave Near the Conclusion of an Academic Term**

For employees engaged principally in an instruction capacity who request leaves near the end of an academic term:

- (a) For a leave beginning more than five (5) weeks prior to the end of an academic term, the school may require that the employee continue their leave until the end of the term if:
  - (1) The leave is at least three (3) weeks long, and
  - (2) Return to work would occur during the three-week period prior to the end of the term.
  
- (b) For a leave beginning less than five (5) weeks prior to the end of an academic term, the school may require the employee to continue the leave until the end of the term if:
  - (1) The leave is greater than two (2) weeks in duration, and
  - (2) Return to work would occur during the two-week period before the end of the term.
  
- (c) For a leave beginning less than three (3) weeks prior to the end of an academic term, and if the duration of the leave is greater than five working days, the school may require the employee to continue the leave until the end of the term.

Employees with questions about the FMLA are encouraged to contact the Personnel office. The Department of Labor also provides Fact Sheets accessible online at [www.DOL.gov](http://www.DOL.gov).