

COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND
LEGISLATIVE SESSION, 2009
BILL NO. 2009-8

Introduced: June 2, 2009

BY: Mr. Cannon, Mrs. Prettyman, Mr. McCain, Mrs. Sample-Hughes, Mrs. Bartkovich, Mr. MacLeod and Mr. Holloway.

AN ACT to amend the Wicomico County Personnel Manual Chapter 15, entitled "Leave and Holiday Benefits," Section 1515, titled "Family Leave" to adopt changes required by amendments to the Federal Family Medical Leave Act.

PREAMBLE

WHEREAS, the Family Medical Leave Act of 1993, 29 CFR Part 825, has been amended and is expected to be amended in the near future; and

WHEREAS, Wicomico County must comply with the Family Medical Leave Act of 1993, as amended by the National Defense Authorization Act for FY 2008 ("NDAA"), Public Law 110-181, and to keep up with the frequent changes it appears advisable, upon the recommendation of the County Executive to add language into our Personnel Manual to automatically adopt all changes that will be made to the Family Medical Leave Act of 1993.

SECTION I. BE IT ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF WICOMICO COUNTY, MARYLAND, IN LEGISLATIVE SESSION, that the Wicomico County Personnel Manual Chapter 15, entitled "Leave and Holiday Benefits," Section 1515, titled "Family Leave" be and the same is hereby amended to adopt all the current and future changes to the Federal Family Medical Leave Act into our Personnel Manual as follows:

Chapter 15
Leave and Holiday Benefits

1515 Family Leave. The Family and Medical Leave Act of 1993 (FMLA), AND TITLE 29, PART 825 OF THE CODE OF FEDERAL REGULATIONS, provides "eligible employees" CERTAIN RIGHTS. ~~the right to take up to twelve work weeks of Family Leave with a continuation of Health Benefits during any twelve (12) month period as outlined below. The FMLA also guarantees leave or time off from work for a qualified reason (see below) and restoration to the same or equivalent position upon return from leave.~~ WICOMICO COUNTY HEREBY ADOPTS THE FAMILY AND MEDICAL LEAVE ACT OF 1993, AS AMENDED FROM TIME TO TIME, AND IT IS EFFECTIVE AS IF FULLY SET FORTH THEREIN, EXCEPT AS MODIFIED AND EXPANDED IN THE FOLLOWING ENUMERATED SECTIONS:

(A) AN EMPLOYEE IS REQUIRED TO USE ACCRUED PAID LEAVE WHILE TAKING FAMILY MEDICAL LEAVE.

(B) FAMILY MEDICAL LEAVE IS CALCULATED BY USING A ROLLING TWELVE (12) MONTH PERIOD, MEASURED BACKWARD FROM THE DATE AN EMPLOYEE USES, OR REQUESTS THE USE OF, FAMILY LEAVE. ENTITLEMENT TO FAMILY LEAVE FOR THE BIRTH OR PLACEMENT OF A SON OR DAUGHTER EXPIRES AT THE END OF THE 12-MONTH PERIOD BEGINNING ON THE DATE OF BIRTH OR PLACEMENT.

~~(a) Purpose. The FMLA gives a covered employee the right to take up to 12 workweeks of Family Leave, either all at once or under certain circumstances on an intermittent basis, because of:~~

- ~~(1) The birth of a child or the placement of a child for adoption or foster care;~~
- ~~(2) The employee is needed to care for a family member with a serious health condition;~~
- ~~(3) The employee's own serious health condition makes the employee unable to do their job.~~

~~(b) Employment Reinstatement. An employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions at the conclusion of the Family Leave (see paragraph 1515n).~~

~~(c) Advance Notice. When the need for Family Leave is foreseeable for a birth or placement of a child, an employee must give the employer at least thirty (30) days notice before the date the leave is to begin. However, if the date of birth or placement requires leave to begin in less than thirty (30) days, the employee must provide notice as practicable.~~

~~(Cd) Approval. All requests for Family Leave will be forwarded by use of the Employee Family Leave Request Form, Form HR-18, through their supervisor and Department Head to the Human Resources Department.~~

~~(De) Intermittent Family Leave or Reduced Work Schedule.~~

~~(1) Serious Health Condition. Family Leave may be taken "intermittently", or by a reduced Family Leave work schedule, if the Family Leave is due to a serious health condition of the employee or necessary to care for a qualified family member with a serious health condition.~~

~~(12) Birth or Placement of Child for Adoption or Foster Care. If Family Leave is for the birth or placement of a child for adoption or foster care, it may be taken "intermittently" or by a reduced work schedule only with the prior approval of the Supervisor, Department Head, and Human Resources Director.~~

~~(f) Duration.~~

~~(1) Maximum Period. An employee may be entitled to take up to twelve (12) work weeks of Family Leave. However, all paid leave taken will be subtracted from the twelve (12) weeks of~~

Family Leave entitlements so an employee will have a cumulative total of twelve work weeks of Family Leave including both paid leave and unpaid leave.

~~(2) Husband and Wife. If a Husband and Wife are both employed, they are entitled:~~

~~(i) Together, up to a cumulative total of 12 work weeks of leave during any 12-month period if the leave is because of the birth or placement of a child for adoption or foster care, or to care for a child if the child has a serious health condition. Both employees; however, may take Family Leave at the same time.~~

~~(ii) In their own right, up to a total of 12 work weeks if the Family Leave is for a serious health condition of the employee, spouse, or parent that qualifies for Family Leave. Any Family Leave taken by an employee under paragraph 1515(f)(2)(i) will count toward the 12 workweeks maximum Family Leave under this subparagraph.~~

~~(E3) Workers' Compensation Leave. All Workers' Compensation Leave taken by an employee will be considered toward the employee's Family Leave entitlement for only that specific on the job injury or illness. Once a total of 12 work weeks of Workers' Compensation Leave and Family Leave has been provided for the employee's on the job injury or illness; additional Family Leave will not be authorized for the same injury or illness; however, the employee may be continued on Workers' Compensation Leave per Chapter 24. Such Workers' Compensation Leave will not be used to reduce an employee's Family Leave entitlements for additional Family Leave under paragraph 1515(f)(2)(i) or 1515 (f)(2)(ii) for other injuries or illnesses.~~

~~(g) Definitions.~~

~~(1) Work Week. A standard workweek is seven consecutive calendar days for regular full time employees and the appropriate prorated number of average hours worked for a regular part time employee. Therefore, a regular full time employee would be entitled to a maximum of 480 hours of Family Leave and a regular part time employee entitled to a prorated maximum based upon the actual number of hours being worked.~~

~~(2) Serious Health Condition. A serious health condition is an illness, injury, impairment, or physical or mental condition that involves: (1) inpatient care in a hospital, hospice, or residential medical care facility, or (2) continuing treatment by a health care provider coupled with incapacitation for more than three days.~~

~~(3) Parent. The biological parent of an employee or an individual who stood in loco parentis (in place of parent) to an employee when the employee was a son or daughter.~~

~~(4) Son or Daughter. A "son or daughter" is a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in parentis. The child must be under 18 years of age, or 18 years of age or older and incapable of self-care because of a mental or physical disability.~~

(h) Eligibility:

~~(1) Requests for Family Leave must be fully documented per paragraph 1515(j) and forwarded through the employee's Supervisor and Department Head to the Human Resources Department on an Employee Family Leave Request Form, Form HR-18.~~

~~(2) Employees must have been employed a minimum of twelve (12) months (not required to be consecutive) with the County and have been paid for a least 1,250 hours during the twelve (12) month period immediately preceding the beginning of Family Leave.~~

~~(3) Family Leave will include all available paid leave to which they may be entitled, i.e.; annual, personal, compensatory time, floating holidays, and sick leave. The maximum amount of Family Leave will include all paid leave taken and shall not exceed twelve cumulative work weeks.~~

~~(4) Entitlement to Family Leave for the birth or placement of a son or daughter expires at the end of the 12-month period beginning on the date of birth or placement.~~

~~(5) If circumstances require, Family Leave may begin before the actual date of birth or placement.~~

~~(6) Employees may not have utilized the maximum Family Leave within the past 12-month period using a rolling 12-month period measured backward from the date an employee uses, or requests the use of, Family Leave.~~

(i) Reason for Approval. Family Leave will not be granted automatically and must be requested by the employee with complete justification and documentation. The following are reasons for which an employee may request Family Leave:

~~_____ (1) Birth of the employee's son or daughter and in order to care for that son or daughter.~~

~~_____ (2) The placement of a son or daughter with the employee for adoption or foster care.~~

~~_____ (3) In order to care for an employee's spouse, son, daughter, or parent of the employee if such spouse, son, daughter, or parent has a serious health condition.~~

~~_____ (4) Because of a serious health condition of the employee which results in the employee being unable to perform their required job functions.~~

(j) Documentation Required. Requests for Family Leave will contain the following, as appropriate:

~~(1) the date on which the serious health condition commenced;~~

~~(2) the probable duration of the condition;~~

~~(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;~~

~~(4) the purpose of the leave, i.e., to provide needed care for son, daughter, spouse, or parent and an estimate of the amount of time that such employee is needed to care for the son, daughter, spouse or parent;~~

~~(5) if for the employee's own serious health condition, a medical statement that the employee is unable to perform the required functions of their position;~~

~~(6) if for intermittent leave, or leave on a reduced leave schedule, for planned medical treatment, the dates on which such treatment is expected to be given and the duration of such treatment;~~

~~(7) if for intermittent leave, or leave on a reduced leave schedule for employee's own serious health condition where they are not able to perform the required functions of their position, a statement of medical necessity for the intermittent leave or leave on a reduced level schedule; and the expected duration of the leave; and~~

~~(8) if for intermittent leave, or leave on a reduced leave schedule to care for son, daughter, parent, or spouse who has a serious health condition, a statement that such leave is necessary for the care and the expected duration and schedule of the intermittent leave or reduced leave schedule.~~

~~(k) Second and Third Opinions. In any case in which the County has reason to doubt the validity of the certification provided or the need for leave, the County may require, at its expense, the employee to obtain the opinion of a second health care provider designated or approved by the County. The FMLA also allows the County to require the employee to obtain a third opinion—again at the expense of the County—when the first and second opinions conflict. This third opinion is considered final and binding on both the County and the employee.~~

~~(F4) Status While on Full Time Family Leave:~~

~~(1) Benefits. Benefits will be continued under the same conditions as if the employee were working. Only those benefits (Health, Life, Dental, Vision or Prescription) that the employee has prior to approval of the Family Leave will be continued during the approved Family Leave period. Leave accrual, holidays, pension and/or retirement system credit, etc., will not be provided to employees on unpaid Family Leave or Sick Pool Leave.~~

~~(12) Benefit Premiums. Benefit premiums will be continued for employees on Family Leave under the same conditions as if the employee were working. Under this circumstance, the employee will still be required to pay his or her share of the premium. Prior to the start of the Family Leave, employees must contact the Human Resources Department to make arrangements to pay their portion of the benefit premiums WHEN THE EMPLOYEE~~

ENTERS A LEAVE WITHOUT PAY STATUS. Employee health insurance will be terminated if premium payments are not received within 30 calendar days of the agreed upon date.

~~(3) Other Benefits. Employees on Family Leave will not receive employment benefits, other than those listed in 1515(1)(1), during the Family Leave period.~~

(24) Other Employment. If an employee engages in any work for compensation, the Family Leave may be terminated and the employee subject to disciplinary action under Chapter 9.

(Gm) Status While on Intermittent Family Leave or Reduced Work Schedule:

~~(1) Benefits. Benefits will be continued under the same conditions as if the employee were working regular full time or regular part time. Only those benefits (Health, Life, Dental, Vision, or Prescription) that the employee has prior to approval of the Family Leave will be continued during the approved Family Leave period. Leave accrual, holidays, pension and/or retirement system credit, etc., may be prorated based upon actual hours worked.~~

(12) Benefit Premiums. Benefit premiums will be continued for employees on Family Leave under the same conditions as if the employee were working. Under this circumstance, the employee will still be required to pay his or her share of the premium. Prior to the start of the Family Leave, employees must contact the Human Resources Department to make arrangements to pay their portion of the benefit premiums WHEN THE EMPLOYEE ENTERS A LEAVE WITHOUT PAY STATUS. Based upon the number of hours scheduled to work, employees may be able to continue payroll deduction. Employee health insurance will be terminated if premium payments are not received within 30 days of the agreed upon date.

~~(3) Other Benefits. Employees on intermittent Family Leave or reduced work schedule will continue to receive employment benefits which may be prorated based upon actual hours being worked during the Family Leave period.~~

(24) Retirement Credit. Partial retirement credit may be provided based upon the number of hours actually worked. However, the total Family Leave period may count toward the maximum of two years of additional Creditable Service allowed for an Approved Leave of Absence. The employee must, however, apply for credit **BEFORE** the leave begins by completion of an "Application to be Placed on a Qualifying Approved Leave of Absence", available from the Human Resources Department.

(35) Other Employment. If an employee engages in any work for compensation, the Family Leave may be terminated and the employee subject to disciplinary action under Chapter 9.

~~(n) Status Upon Expiration of Family Leave. Upon expiration of Family Leave, the employee:~~

~~(1) Return to Work. The employee may return to work as follows:~~

~~(i) Upon completion of Family Leave and return to work, an employee will be reinstated in their old job or an equivalent position. NOTE: In the case of Family Leave, an equivalent position must have equivalent benefits, compensation, working shifts and hours of employment to include “same”, not “comparable” or “similar”; status, responsibility, and authority.~~

~~(ii) Employees will be reinstated within all benefit programs as provided other employees and will receive no loss of any employment benefit accrued prior to the date that the Family Leave started.~~

~~(iii) An employee will not receive service credit for Family Leave periods that exceed thirty (30) calendar days and will have their Leave Accrual and Anniversary Date adjusted accordingly.~~

~~(2) Return to Work Denied. An employee on Family Leave has no greater right to reinstatement than if the employee had been continuously employed during the Family Leave period. The County may deny reinstatement if:~~

~~(i) such denial is necessary to prevent substantial and grievous economic injury to the operations of the County; the County notifies the employee of their intent to deny reinstatement; and in cases in which leave has begun, the employee elects not to return to employment after receiving such notice; or~~

~~(ii) the employee would not otherwise have been employed if leave had not been taken; or~~

~~(iii) the employee, upon request, fails to provide a fitness for duty certification to return to work from their doctor.~~

~~(H3) Extension of Leave. The employee may request that their leave of absence be extended by requesting LWOP per paragraph 1514 (c) (2).~~

~~(14) Employee’s Failure to Take Action. An employee who does not take action to return to work, obtain an approved LWOP extension to their Family Leave or have other appropriate action approved after the expiration of their Family Leave, shall be considered to have resigned from County Government per Chapter 22 for Abandonment of Position.~~

~~(o) Benefit Premiums— Failure to Return to Work. The employee who fails to return to work per paragraph 1515 (n) may be required to reimburse the County for all premiums paid to maintain their health coverage during the Family Leave period provided their failure to return to work is for a reason other than the continuance, recurrence, or onset of a serious health condition of the employee or family~~


~~member that would entitle the employee to Family Leave, or other circumstances beyond the employee's control.~~

(j) Continued Health Entitlement (COBRA) Date. A "qualifying event" triggering requirements that an employee be allowed to continue health benefits coverage (but paying the full cost) for the purpose of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) occurs when it becomes known that an employee is not returning to employment and therefore ceases to be entitled to Family Leave. The employee may also be covered under §15-101 of the Maryland Insurance Article.

SECTION II. BE IT FURTHER ENACTED THAT this Bill shall be known as Bill No. 2009-8 of Wicomico County, Maryland and shall take effect sixty (60) days after its enactment, unless a proper Petition for Referendum thereof shall be filed prior to said date; in which event, the Bill shall not take effect until the expiration of thirty (30) days following the approval of this Bill by a majority of the qualified voters of the County voting in any such referendum.

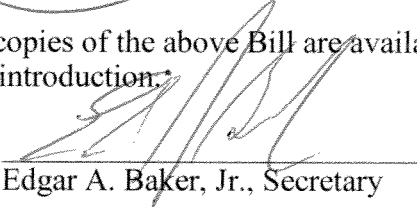
Certified correct as passed and adopted by the County Council of Wicomico County, Maryland this 7th day of July, 2009.

WICOMICO COUNTY, MARYLAND

BY:  _____
John Cannon, President

BY:  _____
Edgar A. Baker, Jr., Secretary

I HEREBY CERTIFY that twenty-five (25) copies of the above Bill are available for distribution to the public and press at the time of its introduction.

 _____
Edgar A. Baker, Jr., Secretary

Explanation:

CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

~~Strike out~~ indicates material deleted from law.

~~CAPITAL STRIKE OUT~~ indicates matter stricken from Bill by Amendment.

Underlining indicates Amendments to Bill

COUNTY COUNCIL
OF
WICOMICO COUNTY, MARYLAND

BILL NO. 2009-8

INTRODUCED BY: Council at request of Executive Legislative Day No. 12

Date: June 2, 2009

Introduced, read first time, ordered posted and public hearing scheduled on: July 7, 2009

AN ACT to amend the Wicomico County Personnel Manual Chapter 15, entitled "Leave and Holiday Benefits," Section 1515, titled "Family Leave" to adopt changes required by amendments to the Federal Family Medical Leave Act.

Time: 10:30 am Location: Council Chambers

PUBLIC HEARING: Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on

July 7, 2009 and concluded on, July 7, 2009.

Matthew E. Creamer
Council Administrator

CERTIFICATION

The undersigned hereby certifies that this Bill was Approved and Adopted by the County Council of Wicomico County, Maryland, on the 7th day of July, 2009.

Matthew E. Creamer
Council Administrator

Presented to the County Executive for approval this 7th day of July, 2009 at 3:34 a.m./p.m. (5 days §411)

Matthew E. Creamer
Council Administrator

BY THE EXECUTIVE:

Ribbaldy Kelly
County Executive

APPROVED Date: July 9, 2009
(21 days §411)

VETOED Date: _____

EFFECTIVE DATE: This Bill having been approved by the County Executive and returned to the Council, becomes law on July 7, 2009 and effective on: September 6, 2009
(60 days §311)

ENROLLMENT: Legislative Bill No.2009-8 is herewith submitted to the County Council of Wicomico County for enrollment as being the text as finally passed.

CERTIFIED TRUE AND CORRECT

Matthew E. Creamer
Council Administrator
Date: 7-7-09

ENROLLED

Julius T. [Signature]
Council President
Date: 7-7-09