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RESOLUTION NUMBER 459CIRCUIT COURT  
DORCHESTER COUNTY**RESOLUTION AMENDING DORCHESTER COUNTY PERSONNEL RULES  
AND REGULATIONS**

**WHEREAS**, the Dorchester County Personnel Rules and Regulations were adopted on June 18, 1996 pursuant to Article 25, Section 3 of the Annotated Code of Maryland;

**WHEREAS**, Dorchester County Government resolves to comply with the Family Medical Leave Act, typically referred to as FMLA, approved by Congress on August 5, 1993 and revised effective January 16, 2009; and

**NOW, THEREFORE, BE IT RESOLVED THAT** the following specified paragraphs be added to Section IV. Employee Benefits. F. Family and Medical Leave to read as follows:

Dorchester County Government will comply with the Family and Medical Leave Act, typically referred to as FMLA, approved by Congress on August 5, 1993 and revised effective January 16, 2009. The function of this resolution is to provide employees with a general description of their FMLA rights. In the event of any conflict between this resolution and the applicable law, employees will be afforded all rights required by law.

**A. General Provisions**

Dorchester County Government, in accordance with FMLA, will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified below.

**B. Eligibility**

To qualify to take family or medical leave (FMLA), the employee must meet all of the following conditions:

1. The employee must have worked for Dorchester County Government for 12 months or 52 weeks. The 12 months or 52 weeks are not required to be consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years unless the break in service is (1) due to an employee's fulfillment of National Guard, Reserve or military obligations, or (2) governed by a written agreement.
2. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee.

### **C. Type of Leave Covered**

#### **Basic Leave**

- 1) **The birth and care of the newborn child of the employee;**
- 2) **The placement of a child for adoption or foster care and to care for the newly placed child;**
- 3) **To care for an immediate family member (spouse, child or parent) with a serious health condition, as defined by FMLA; or**
- 4) **The serious health condition, as defined by FMLA, of the employee that makes the employee unable to perform the functions of their position.**

#### **Military Family Leave**

5) **Qualifying exigency leave for families of members of the National Guard and Reserves when the covered military member is on active duty or called to active duty in support of a contingency operation** (An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave. The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period); or

6) **Military caregiver leave (also known as covered service member leave) to care for an ill or injured service member** (This leave may extend up to 26 weeks in a single 12-month period for an employee to care for a spouse, son, daughter, parent or next of kin covered service member with a serious illness or injury incurred in the line of duty on active duty. Next of kin is defined, under FMLA, as the closest blood relative of the injured or recovering service member).

### **D. Amount of Leave**

An eligible employee can take up to 12 weeks for FMLA circumstances 1 through 5 above during any 12-month period. The County will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under FMLA. Each time an employee takes leave, the County will compute the amount of leave the employee has taken under FMLA in the last 12 months and subtract it from

the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA circumstance 6 above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the County will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If a husband and wife both work for Dorchester County Government and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a child with a serious health condition (as defined by FMLA) the husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for the County and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

#### **E. Employee Status and Benefits During Leave**

While an employee is on leave, the County will continue the employee's health benefits, if currently enrolled, during the leave period at the same level and under the same conditions as if the employee had continued to work. Changes to plans or coverage level can not be made due to FMLA. The employee will continue to be responsible for their portion of the premium (see below).

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the County will require the employee to reimburse the County the amount it paid for the employee's health insurance premium during the leave period, as allowed under FMLA.

While on paid leave, the County will continue to make payroll deductions to collect the employee's share of the premium. If on unpaid leave, the employee must continue to make this payment, either in person or by mail. The employee will be notified of the amount and date due. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The County will provide 15 days' notification prior to the employee's loss of coverage.

#### **F. Employee Status After Leave**

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider. This requirement will be included in the County's response to the FMLA request.

#### **G. Use of Paid and Unpaid Leave**

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid vacation,

personal or sick leave prior to being eligible for unpaid leave. Sick leave may be run concurrently with FMLA leave if the reason for the FMLA leave is covered by the County's established sick leave policy.

An employee who is using FMLA leave for other qualifying reasons must use all paid vacation and personal leave prior to being eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation and personal leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid vacation, personal leave or sick leave (as long as the reason for the absence is covered by the County's established sick leave policy) prior to being eligible for unpaid leave.

**H. Intermittent Leave or a Reduced Work Schedule**

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule if indicated necessary by their medical provider. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period).

**I. Certification for the Employee's Serious Health Condition**

The County will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition (available from Human Resources).

The County may directly contact the employee's health care provider for verification or clarification purposes. The County will not use the employee's direct supervisor for this contact, per FMLA. Before the County makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the County will obtain the employee's permission for clarification of individually identifiable health information, per FMLA.

The County has the right to ask for a second opinion if it has reason to doubt the certification. The County will pay for the employee to get a certification from a second doctor, which the County will select. The County may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the County will require the opinion of a third doctor. The County and the employee will mutually select the third doctor, and the County will pay for the opinion. This third opinion will be considered final. The employee will be

provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

#### **J. Certification for the Family Member's Serious Health Condition**

The County will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition (available from Human Resources).

The County may directly contact the employee's health care provider for verification or clarification purposes. The County will not use the employee's direct supervisor for this contact, per FMLA. Before the County makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the County will obtain the employee's permission for clarification of individually identifiable health information, per FMLA.

The County has the right to ask for a second opinion if it has reason to doubt the certification. The County will pay for the employee to get a certification from a second doctor, which the County will select. The County may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the County will require the opinion of a third doctor. The County and the employee will mutually select the third doctor, and the County will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

#### **K. Certification of Qualifying Exigency for Military Family Leave**

The County will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave (available from Human Resources).

#### **L. Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave**

The County will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using

the DOL Certification for Serious Injury or Illness of covered service member (available from Human Resources).

**M. Recertification**

The County may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the employee receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the County may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The County may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

**N. Procedure for Requesting FMLA Leave**

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to their Department Head or supervisor. The Department Head or supervisor must notify Human Resources immediately upon notice. When the need for the leave is foreseeable, the employee must provide the Department Head or supervisor with at least 30 days notice, per FMLA. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave as soon as possible. When the need for FMLA leave is not foreseeable, the employee must comply with their department's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

**O. Designation of FMLA Leave**

After the employee has submitted the appropriate certification form, Human Resources will provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice

**P. Intent to Return to Work From FMLA Leave**

On a basis that does not discriminate against employees on FMLA leave the County may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

**Q. Employee Questions**

Employees with questions about FMLA should contact Human Resources.

**R. Unlawful Acts**

FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right protected under FMLA and/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.

HAVING BEEN DULY POSTED IN ALL COUNTY DEPARTMENTS, THIS RESOLUTION IS HEREBY PASSED AND ADOPTED 14<sup>th</sup> DAY OF April 2009 TO BE EFFECTIVE THE 14th DAY OF April 2009.

ATTEST:

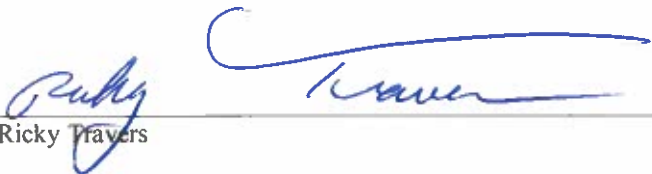
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