

**Buffalo & Erie County Public Library**  
**PERSONNEL POLICIES AND PROCEDURES**

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**SUBJECT: Family and Medical Leave Act (FMLA)**

**CHAPTER: VII**

**SECTION: 1**

**EFFECTIVE DATE: 1/12**

**REVISION DATE: 4/14, Modified for the B&ECPL effective 1/1/15**

**I. STATEMENT OF POLICY**

The purpose of this policy is to inform employees of their rights under the Family and Medical Leave Act of 1993 (FMLA), as amended.

The U.S. Department of Labor's Employment Standards Administration administers and enforces FMLA for all private, state, and local government employees and some federal employees. The law contains provisions relating to employer coverage; employee eligibility for the benefits of the law; entitlement to leave, maintenance of health benefits during leave, and job restoration after leave; notice and certification of the need for FMLA leave; and protections for employees who request or take FMLA leave. In addition, the law includes certain employer record keeping provisions.

## II. GUIDELINES

### A. Entitlement to Leave

1. FMLA requires covered employers to provide up to twelve (12) weeks of unpaid, job-protected leave during a twelve (12) month period to eligible employees for the following reasons:
  - a. For incapacity due to pregnancy, prenatal medical care, or child birth;
  - b. To care for the employee's child after birth or placement for adoption or foster care;
  - c. To care for the employee's spouse, minor son or daughter, or parent, who has a serious health condition;
  - d. For a serious health condition that makes the employee unable to perform the employee's job; or
  - e. For a qualifying exigency arising from active military duty or call to active duty of an eligible employee's spouse, parent, or child.
  
2. 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.
  
3. Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than three (3) consecutive calendar days combined with at least two (2) visits to a

health care provider or one (1) visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition.

4. FMLA also includes a special leave entitlement that permits eligible employees to take up to twenty-six (26) weeks of leave to care for a covered service member or veteran during a single twelve (12) month period. A "covered service member" is a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty), and that may render the member medically unfit to perform the duties of the member's office, grade, rank or rating.

## B. Eligibility

To be eligible for FMLA benefits, an employee must have:

1. Worked for B&ECPL at least twelve (12) months; and
2. Worked at least 1250 regular hours in the previous twelve (12) months.

## C. Qualifying for Leave

1. Employees must provide: sufficient information for the employer to determine if the leave qualifies for FMLA protection, sufficient advance notice of leave, and the anticipated timing and duration of the leave.

2. Employees will be provided a medical certification form to be completed by their health care provider to substantiate their need for leave.
3. Human Resources may ask employees to recertify periodically; the need may arise as often as every thirty (30) days in certain situations, but at least once a calendar year.
4. Thirty (30) days of advance notice is required when the leave is foreseeable. If leave is foreseeable and notice is not given the taking of the FMLA can be delayed until the requisite thirty (30) days has passed.
5. For Military Family leave, the employee shall provide as much notice to the employer as is reasonable and practicable.
6. Employee must inform department of expected return date if possible.
7. Taking of leave may be denied if these requirements are not met.

D. Notification of Eligibility

1. As a covered employer, the B&ECPL must inform employees requesting leave whether they are eligible under FMLA.
  - a. If they are eligible, the notices must specify any additional information required as well as the employee's rights and responsibilities.
  - b. If they are not eligible, the employer must provide a reason for the ineligibility. The B&ECPL must also inform employees if the

leave will be designated as FMLA protected and the amount of leave counted against the employee's leave entitlement.

2. If the employer determines that the leave is not FMLA protected, the employer must notify the employee.

#### E. Procedure

1. Human Resources will be responsible for administering the provisions of the FMLA, and will process all requests for FMLA leave utilizing a standard procedure to ensure that all employees are afforded the protections under FMLA.
2. An eligible employee who wishes to take FMLA leave must provide his/her supervisor with thirty (30) days advance notice when the leave is foreseeable. (See II.C.) The employee's supervisor should promptly notify HR of the request; the employee may also contact HR directly.
3. HR will make an initial determination of the employee's eligibility. (see II.B.) The employee will be notified of the eligibility determination. If not eligible, HR will provide an explanation.
4. If an employee is eligible, HR will provide the employee with a medical certification form. The employee will have fifteen (15) days to have the form completed by employee's health care provider and returned directly to HR.

5. Upon receipt, HR will review the certification to determine if condition qualifies under FMLA. The condition must meet the definition of a “serious health condition” (See II.A.)
6. If the certification is incomplete or requires clarification, HR will notify the employee. Employee shall have seven (7) calendar days to cure the deficiency.
7. HR will notify the employee of the determination. If approved, HR will send a letter with notice of designation to the employee with an instruction sheet and his/her supervisor will receive a copy for timekeeping purposes.
8. Employees and supervisors should contact Human Resources with any questions regarding the Family and Medical Leave Act.

F. Use of Leave

1. An employee does not need to use his/her leave entitlement in one continuous block. Leave can be taken intermittently or on a reduced leave schedule as supported by certification of health care provider.
2. Employees must make reasonable efforts to schedule leave for planned medical treatment during non-working hours so as not to unduly disrupt the employers operations.
3. When calling in to report an FMLA absence (if unable to schedule leave in advance), the employee must identify it as FMLA absence,

who it pertains to (if family member), the nature of illness, and what form of paid leave should be utilized.

4. Employees who are suspected of abusing FMLA (i.e. taking more time than estimated in certification or in conjunction with other time off) may also be asked to recertify.

E. Substitution of Paid Leave for Unpaid Leave

The B&ECPL requires an employee taking FMLA leave to exhaust any accrued time during the leave before going 'unpaid'. In most cases, sick time is used first and then other forms of paid leave may be used. After exhausting paid FMLA leave, non-paid FMLA leave will continue until the conclusion of the protected twelve (12) week allowance. Following the conclusion of protected leave, the employer will decide whether non-FMLA leave should apply. In order to use paid leave for FMLA leave, employees must comply with the normal paid leave and timekeeping policies and procedures.

F. Benefits and Protections

During FMLA leave, the employer must maintain the employee's health coverage under any group health plan on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

## G. Harassment Because of Use of FMLA Leave

FMLA makes it unlawful for any employer to:

1. Interfere with, restrain or deny the exercise of any right provided under FMLA; or
2. Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under or relating to FMLA.

## H. Enforcement of Harassment Policy

1. Employees who believe they have been harassed or retaliated against as a result of taking time under the FMLA or for engaging in other activity protected by the FMLA should first file an internal complaint with their supervisor, department head or Human Resources at 858-6103. An employee may also file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer.
2. 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.