



## PERSONNEL POLICY

### SUBJECT: FAMILY AND MEDICAL LEAVE (FMLA)

DATE: January 1, 2017

Number: 104-16

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#### I. Statement of the Policy

It is the policy of Fulton County to fully comply with the Family and Medical Leave Act ("FMLA") to provide eligible employees with leave for qualifying reasons and to assure those employees that they will be able to return to work into the same or an equivalent position with all of the same benefits, pay, and terms and conditions of employment as provided by law.

It is further the policy of Fulton County to comply fully with each and every requirement of the Family and Medical Leave Act without regard to race, color, religion, sex, pregnancy (including childbirth, lactation or related medical conditions), sexual orientation, gender identity or expression, age, national origin or ancestry, physical or mental disability, genetic information (including testing and characteristics), marital status, parental status, veteran status, uniformed service-member status, or any other consideration protected by federal, state or local law.

#### II. Eligibility

To be eligible for FMLA Leave benefits, employees must have: (1) worked for Fulton County for a total of at least 12 months, which need not be consecutive as defined by applicable law; (2) worked at least 1,250 hours over the previous 12 months as of the start of the leave; and (3) worked at a location where at least 50 employees are employed by Fulton County within 75 miles, as of the date the leave is requested.

Eligibility requirements may differ for employees who have been on a protected military leave of absence. If employees are unsure whether they qualify, they should contact the Chief Human Resources Officer or his/her designee.

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### **III. Reasons for Which FMLA Leave May be Granted**

- The birth, adoption or foster care of an employee's child within 12 months following birth or placement of the child (Bonding Leave);
- To care for an immediate family member (spouse, child, or parent with a serious health condition (Family Care Leave);
- An employee's inability to work because of a serious health condition (Serious Health Condition Leave);
- A "qualifying exigency," as defined under the FMLA, arising from a spouse's, child's, or parent's "covered active duty" (as defined in the accompanying Procedure) as a member of the military reserves, National Guard or Armed Forces (Military Emergency Leave); or
- To care for a spouse, child, parent or next of kin (nearest blood relative) who is a "Covered Service member," as defined in the accompanying Procedure (Military Caregiver Leave).

### **VI. Establishment and Implementation of Procedure**

The County Manager, in consultation with the Chief Human Resources Officer and the County Attorney, is authorized to establish and modify, as needed, a procedure for implementing this policy.

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## PERSONNEL PROCEDURE

### SUBJECT: FAMILY AND MEDICAL LEAVE (FMLA)

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#### I. Reasons for Which FMLA Leave May be Granted

##### A. Qualifying Reasons for FMLA Leave:

- The birth, adoption or foster care of an employee's child within 12 months following birth or placement of the child (Bonding Leave);
- To care for an immediate family member (spouse, child, or parent with a serious health condition (Family Care Leave);
- An employee's inability to work because of a serious health condition (Serious Health Condition Leave);
- A "qualifying exigency," as defined under the FMLA, arising from a spouse's, child's, or parent's "covered active duty" (as defined below) as a member of the military reserves, National Guard or Armed Forces (Military Emergency Leave); or
- To care for a spouse, child, parent or next of kin (nearest blood relative) who is a "Covered Service member," as defined below (Military Caregiver Leave).

##### B. Applicable Definitions

- **"Child"** for purposes of Bonding Leave and Family Care Leave, means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability at the time that Family and Medical Leave is to commence. "Child," for purposes of Military Emergency Leave and Military Caregiver Leave, means a biological, adopted or foster child, stepchild, legal ward, or a child for whom the person stood *in loco parentis*, and who is of any age.

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- **“Parent”** for purposes of this policy, means a biological, adoptive, step or foster father or mother, or any other individual who stood *in loco parentis* to the person. This term does not include parents-in-law. For Military Emergency leave taken to provide care to a parent of a deployed military member, the parent must be incapable of self-care as defined by the FMLA.
- **“Covered Active Duty”** means (1) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and (2) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty (or notification of an impending call or order to active duty) in support of a contingency operation as defined by applicable law.
- **“Covered Service Member”** means (1) a member of the Armed Forces, including a member of a reserve component of the Armed Forces, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness incurred or aggravated in the line of duty while on active duty that may render the individual medically unfit to perform his or her military duties, or (2) a person who, during the five (5) years prior to the treatment necessitating the leave, served in the active military, Naval, or Air Service, and who was discharged or released therefrom under conditions other than dishonorable (a “veteran” as defined by the Department of Veteran Affairs), and who has a qualifying injury or illness incurred or aggravated in the line of duty while on active duty that manifested itself before or after the member became a veteran. For purposes of determining the five-year period for covered veteran status, the period between October 28, 2009 and March 8, 2013 is excluded.
- **“Spouse”** means the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into, or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state. This includes common law marriage and same sex marriage in places where these marriages are recognized.
- **“Key employee”** means a salaried FMLA-eligible employee who is among the highest paid 10 percent of all the employees employed by the employer within 75 miles of the employee's worksite.

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## II. Notice and Certification

### (1) Bonding, Family Care, Serious Health Condition and Military Caregiver Leave Requirements

Employees are required to provide:

- When the need for the leave is foreseeable, employees should provide their Appointing Authority with 30 days advance notice or such notice as is both possible and practical if the leave must begin in less than 30 days (normally this would be the same day the employee becomes aware of the need for leave or the next business day);
- When the need for leave is not foreseeable, employees should provide notification to their Appointing Authority within the time prescribed by Fulton County's normal absence reporting policy, unless unusual circumstances prevent compliance, in which case notice is required as soon as is otherwise possible and practical;
- When the leave relates to medical issues, a completed Certification of Health-Care Provider form within 15 calendar days (for Military Caregiver Leave, an invitational travel order or invitational travel authorization may be submitted in lieu of a Certification of Health-Care Provider form) should be provided to the Department of Human Resources Management;
- Periodic recertification (as allowed by law); and
- Periodic reports during the leave.

When leave is for planned medical treatment, employees must try to schedule treatment so as not to unduly disrupt Fulton County's operations. Please contact the Immediate Supervisor or Appointing Authority - prior to scheduling planned medical treatment so that scheduling conflicts can be minimized as much as possible.

Fulton County is required to provide:

- Fulton County will provide an employee with written notice of the designation of leave as protected Family and Medical Leave;
- Fulton County will provide an employee with written instructions regarding the requirements for the employee to furnish medical certification of a serious health condition;
- Fulton County will provide an employee with notice regarding the consequences of the employee's failure to provide the requested medical certification of a serious health condition;

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- Fulton County will provide an employee with information regarding the County's policy with regard to substitution of paid leave during any time taken pursuant to Family and Medical Leave;
- Fulton County will provide an employee with notice regarding an employee's responsibility to continue making premium payments to maintain health benefits and shall designate where the employee shall send those payments during the period of Family and Medical Leave;
- Fulton County will provide an employee with notice regarding any departmental requirement that the employee present a fitness for duty certification upon his/her return to work; and
- Fulton County will provide an employee with information regarding the employee's right to restoration to the same or an equivalent job upon his/her return from leave.

## **(2) Certification**

Certification forms are available from the Department of Human Resources Management or on Fulton County's Employee portal. Completed certification forms should be submitted to the Department of Human Resources Management Attn: FMLA Leave Administrator within fifteen calendar (15) days. At the County's expense, Fulton County may require a second or third medical opinion regarding the employee's own serious health condition or the serious health condition of the employee's family member. In some cases, Fulton County may require a second or third opinion regarding the injury or illness of a Covered Service Member, but only where the military caregiver leave certification has been completed by a healthcare provider who is not affiliated with the Department of Defense (DOD), the Veterans Administration (VA), or TRICARE. Employees are expected to cooperate with Fulton County in obtaining additional medical opinions that may be required.

### **(a) Initial Certification of a "Serious Health Condition"**

A "serious health condition" refers to an illness, injury, impairment, or physical or mental condition which requires any one of the following;

- An overnight stay at a hospital, hospice or residential medical care facility; or
- A period of incapacity of at least four calendar days combined with either of the following: (1) any period of incapacity relating to the same condition which requires treatment at least two times by a nurse or physician's assistant under the direct supervision of a health care provider; or (2) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of a health care provider; or

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- Any period of incapacity as a result of pregnancy or the necessity for prenatal care; or
- Any period of incapacity or treatment which meets any one of the following criteria:
  - Required periodic visits for treatment by a health care provider, or by a nurse practitioner or physician's assistant under the direct supervision of a health care provider within the scope of their practice under Georgia law;
  - Continues over an extended period of time (this includes recurring episodes of a single underlying condition);
  - Causes episodic rather than a continuing period of incapacity;
  - A period of incapacity which is long-term due to a condition for which treatment may not be effective (e.g. Alzheimer's, a severe stroke or the terminal stages of a disease); or
  - Any period of absence to receive multiple treatments by a health care provider.

Upon either (a) an employee's absence for a minimum period of four (4) scheduled work days and when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason; or (b) upon request by the employee, the Appointing Authority or his/her designee shall send an employee notice of their status as an FMLA-eligible employee and a Certification Form, via certified mail, along with the instructions for the employee to have the form completed by his/her health care provider (or by the parent's, child's or spouse's health care provider when the absence is the result of the employee caring for a family member with a serious health condition) and returned to the Department of Human Resources Management Attn: FMLA Leave Administrator within fifteen calendar (15) days so that the FMLA Leave Administrator may determine whether or not the leave should be charged as Family and Medical Leave.

In cases where an employee is not FMLA-eligible due to the employee's length of service with Fulton County, the Appointing Authority or his/her designee shall send the employee notice of non-eligibility and the notice must state at least one reason why the employee is not eligible. Exhaustion of all FMLA leave does not make an employee FMLA-ineligible and, although the employee's leave will not be approved if all leave has been exhausted, such employees should still be sent the notice of their status and the Certification Form as described above. The FMLA Leave Administrator will notify the employee if they have been approved for Family and Medical Leave and communicate to the Appointing Authority the duration of the Family and Medical Leave. This requirement is applicable in all situations other than those situations in which (i) an

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employee is on approved vacation, holiday, or compensatory leave or (ii) an employee has “called in sick” and, upon inquiry, has informed the Appointing Authority that the condition is not sufficiently severe to require the services of a health care provider. At the time an employee is informed of an approved FMLA request, the employee should be provided a copy of a return to work certification, notification that a completed return to work certification is required before the employee may resume work, and a copy of their job description.

If an employee submits a Certification that is incomplete or insufficient, Fulton County will notify the employee in writing of what additional information is needed to make the Certification complete and sufficient. Fulton County will return the Certification to the employee to remedy the deficiency(ies). The employee must provide the additional information to Fulton County within seven calendar days, in most circumstances.

At no time may a supervisor or Appointing Authority contact an employee’s health care provider, either directly or indirectly. All contact with an employee’s health care provider must be made by the employee, a FMLA Leave Administrator, a human resources professional or by a health care provider representing Fulton County, with the employee’s written permission, solely for the purposes of clarifying and/or authenticating the Certification or the terms thereof.

Any employee who requires Family and Medical Leave for the purpose of caring for a seriously ill spouse, child or parent may be required to obtain the same certification from the family member’s health care provider.

**(b) Second Opinion of Initial Certification**

At the sole discretion of the FMLA Leave Administrator, an employee seeking certification may be required to submit to a medical examination such that a second opinion may be rendered as to the employee’s entitlement to certification. This “second certification” will be at the expense of the County. When the FMLA Leave Administrator determines, for good cause, that a second opinion shall be required, then he/she must contact the Finance Department to arrange for funding for the second opinion. The Finance department shall make the required funds available. The selected health care provider may not be employed on a regular basis by Fulton County nor may Fulton County regularly contract with or otherwise regularly utilize the services of the health care provider.

Pending the opinion of the second physician, the employee will be provisionally entitled to the benefits and protections afforded by certification.

**(c) Third & Binding Opinion on Initial Certification**

Should the conclusions of the second examination contradict the conclusions of the initial examination, at its sole discretion, the FMLA Leave Administrator may require the employee seeking initial certification to submit to a third and binding medical examination. This third and binding examination will also be at the expense of the County. The health care provider conducting the examination will be a health care

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provider agreed upon by the County and the employee. When the FMLA Leave Administrator determines, for good cause, that a third opinion shall be required, then he/she must contact the Finance Department to arrange for funding for the third opinion. The Finance Department shall make the required funds available.

Pending the certification decision of the final physician, the employee will remain provisionally entitled to the benefits and protections afforded by certification.

Should the employee fail to act in good faith in making a selection concerning the appropriate physician, then the employee shall be bound by the determination of the second examination.

**(d) Results of Certification**

Should the required documentation ultimately establish that the employee is not entitled to certification, then any time off will be counted against the employee's sick leave balance and, in the absence of an available sick leave balance, the employee's vacation and/or holiday leave balance and the time taken will not be designated as Family and Medical Leave. At any time, the employee may request, in writing, that his/her compensatory time be charged. Otherwise, leave in excess of accumulated balances shall be charged as leave without pay.

Should the required documentation ultimately establish that the employee is entitled to certification, then any time off will still be counted against the employee's sick leave, vacation and/or holiday leave balances as applicable. However, the time taken will be additionally designated as protected Family and Medical Leave. At any time, the employee may request, in writing, that his/her compensatory time be charged. Otherwise, leave in excess of accumulated balances shall be charged as leave without pay. Upon written request, the County shall furnish the employee with a copy of the examining health care provider's conclusions within seven (7) business days of the employee's written request.

**(e) Storage of Records Received as a Result of Second and/or Third Examinations**

Employee records reflecting any medical information that has been received by the County shall be stored by the Department of Human Resources Management in a file separate from the employee's official personnel file. The Chief Human Resources Officer is responsible for ensuring the confidentiality of the information contained in the employee's medical file.

**(f) Re-Certification**

In general, Fulton County may request an employee to provide a recertification no more often than every 30 days and only in connection with an absence by the employee. However, if a certification indicates that the minimum duration of the serious health condition is more than 30 days, Fulton County will wait until that minimum duration expires before requesting recertification. However, in cases where the serious

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health condition is in excess of 6 months (e.g., a lifetime condition) or the condition is of an indefinite duration, a recertification may be requested every 6 months.

Regardless of the anticipated duration of the leave, Fulton County may request a recertification in less than 30 days if:

- the employee requests an extension of leave,
- the circumstances described by the previous certification have changed significantly (for better or worse), or
- Fulton County receives information that causes it to doubt the employee's stated reason for the absence or the continuing validity of the existing medical certification.

A completed recertification form must be returned by the employee no later than 15 calendar days from the date of the recertification request.

In general, Fulton County will ask for the same information in a recertification as that requested in the original medical certification. However, Fulton County may also provide an employee's health care provider with a record of the employee's absences and ask if the serious health condition and need for leave is consistent with the leave pattern. The employee is responsible for paying for the cost of a recertification. Fulton County will not require second and/or third examinations to either confirm or refute the opinion of the physician submitting a response to a re-certification request.

### **(3) Military Emergency Leave Requirements**

Employees are required to provide:

- As much advance notice as is reasonable and practicable under the circumstances;
- A copy of the covered service member's active duty orders when the employee requests leave and/or documentation (such as Rest and Recuperation leave orders) issued by the military setting forth the dates of the service member's leave; and
- A completed Certification of Qualifying Exigency form within 15 calendar days, unless unusual circumstances exist to justify providing the form at a later date.

Certification forms are available from the Department of Human Resources Management or on the Employee portal.

### **(4) Failure to Provide Certification**

Absent unusual circumstances, failure to comply with these notice and certification requirements may result in a delay or denial of the leave.

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### **III. Methods and Amount of Leave Available**

#### **(1) Amount of Leave Available as Family and Medical Leave**

The maximum amount of FMLA Leave will be 12 workweeks in any 12-month period when the leave is taken for: (1) Bonding Leave; (2) Family Care Leave; (3) Serious Health Condition Leave; and/or (4) Military Emergency Leave. However, if both spouses work for Fulton County and are eligible for leave under this policy, the spouses will be limited to a total of 12 workweeks off between the two of them when the leave is for Bonding Leave or to care for a parent using Family Care Leave. The applicable "12-month period" utilized by Fulton County is a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

The maximum amount of FMLA Leave for an employee wishing to take Military Caregiver Leave will be a combined leave total of 26 workweeks in a single 12-month period. A "single 12-month period" begins on the date of the employee's first use of such leave and ends 12 months after that date.

If both spouses work for Fulton County and are eligible for leave under this policy, the spouses will be limited to a total of 26 workweeks off between the two when the leave is for Military Caregiver Leave only or if the leave is for a combination of Military Caregiver Leave, Military Emergency Leave, Bonding Leave and/or Family Care Leave taken to care for a parent.

For employees who normally work part-time schedules, the amount of leave to which the employee is entitled is determined on a pro rata or proportional basis by comparing the new schedule with the employee's normal schedule. For example, if an employee normally works 30 hours per week and, while on FMLA leave, works only 20 hours per week, the employee's 10 hours of leave would constitute 1/3 of a week of FMLA. For employees with schedules which vary from week to week, an average of the weekly hours worked over the immediately preceding twelve weeks will be used as the employee's normal" workweek.

It shall be the responsibility of each Appointing Authority, or his/her designee (such as the departmental payroll clerk), to calculate all Family and Medical Leave, including intermittent and/or reduced leave, taken pursuant to this policy and procedure and to communicate the same to the FMLA Leave Administrator.

To the extent required by law, some extensions to leave beyond an employee's FMLA entitlement may be granted when the leave is necessitated by an employee's work-related injury or illness or by a "disability" as defined under the Americans with Disabilities Act (the "ADA") and/or applicable state or local law. Certain restrictions on these benefits may apply. Employees who believe they may need to request additional leave beyond their FMLA entitlement should contact the ADA Unit of Fulton County's Office of Diversity and Civil Rights Compliance ("DCRC").

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## **(2) Intermittent or Reduced Schedule Leave**

Under some circumstances, employees may take FMLA Leave intermittently or on a reduced schedule, which means continuing to work while taking leave on an intermittent / as-needed basis, or by reducing the employee's normal weekly or daily work schedule. An employee may take leave intermittently whenever it is medically necessary to care for a seriously ill family member, or because the employee is seriously ill and unable to work. Leave due to military exigencies may also be taken on an intermittent basis. If the requested intermittent or reduced schedule leave is for the birth or placement of a child, the FMLA Administrator is not required to grant the request.

Leave taken intermittently may be taken in increments of no less than 1 minute. Only the amount of leave actually taken will be counted toward an employee's twelve-week entitlement. For example, if an employee normally works five days per week and takes one day off, the employee has utilized 1/5 week of his/her entitlement.

Employees who take leave intermittently or on a reduced work schedule basis for a planned medical treatment must make a reasonable effort to schedule the leave so as not to unduly disrupt Fulton County's operations. Please contact the Immediate Supervisor or Appointing Authority prior to scheduling planned medical treatment so as to limit scheduling conflicts. If FMLA Leave is taken intermittently or on a reduced schedule basis due to foreseeable planned medical treatment, the County may require employees to transfer temporarily to an available alternative position with an equivalent pay rate and benefits, including a part-time position, to better accommodate recurring periods of leave. Transfers will be subject to the Lateral Transfer Policy.

If an employee's request for intermittent leave is approved, Fulton County may later require employees to obtain recertification of their need for leave as allowed by law. For example, Fulton County may request recertification if it receives information that casts doubt on an employee's report that an absence qualifies for FMLA Leave.

## **(3) Concurrent Leave**

While on Family and Medical Leave, an employee will be required to exhaust all paid vacation, holiday, and/or sick leave before they go on unpaid leave. The employee may make a written request to utilize accrued compensatory time concurrently and any such request shall be granted. Therefore, the employee may concurrently be on vacation, holiday, sick or compensatory leave and Family and Medical Leave.

## **IV. Required Use of Paid Leave Time**

Fulton County requires employees to utilize any vacation, sick, and/or holiday leave available prior to being placed on unpaid status during family leave. Employees may also request in writing to use their accrued compensatory time and such request will be approved by their Appointing Authority. Employees using paid leave while on FMLA are subject to the policies governing use of paid leave. Any employee who uses

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any paid leave for medical appointments or recurring treatment may be required to submit reports of attendance at such appointments.

## **V. Continuation of Benefits During Leave**

Fulton County shall maintain all of an employee's benefits under the same terms and conditions as if the employee were not on Family and Medical Leave. Specifically, Fulton County will continue making contributions to employee group health benefits during their leave on the same terms as if employees had continued to actively work. This means that if employees want their benefits coverage to continue during their leave, they must also continue to make the same premium payments they are required to make for themselves or their dependents. If the employee is receiving concurrent paid leave or is on intermittent leave, Fulton County will deduct the employee's benefit premiums from their pay check as usual. If the employee is on unpaid leave, Fulton County will provide the employee with instructions regarding how to make his/her regular contributions to his/her health coverage. Should the employee fail to make such contributions, Fulton County reserves the right to drop the employee from coverage during his/her leave as allowed by law.

In accordance with applicable law, upon reinstatement, Fulton County shall provide the same level of coverage as prior to the leave with no qualifying periods, physical examinations, or exclusions of pre-existing conditions.

Employees taking Bonding Leave, Family Care Leave, Serious Health Condition Leave, and Military Emergency Leave will generally be provided with group health benefits for a 12 workweek period. Employees taking Military Caregiver Leave may be eligible to receive group health benefits coverage for up to a maximum of 26 workweeks. In some instances, Fulton County may recover premiums it paid on the employee's behalf to maintain health coverage if the employee fails to return to work following a FMLA Leave.

An employee's length of creditable service will not be impacted by the use of FMLA leave, but accrued benefits such as vacation and sick leave will not accrue while an employee is on an unpaid FMLA Leave.

## **VI. Reinstatement**

If, upon expiration of the employee's Family and Medical Leave, the employee is able to return to work and perform the essential functions of his/her position, then, in accordance with applicable law, under most circumstances, that employee shall be restored to his/her original position or an equivalent position, with equivalent benefits, pay, and other terms and conditions of employment. However, employees have no greater right to reinstatement than if they had been continuously employed rather than on leave. For example, if an employee would have been laid off if he or she had not gone on leave or, if the employee's position was eliminated during the leave, then the employee will not be entitled to reinstatement.

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At least 10 days prior to the expiration of an approved FMLA leave, the FMLA Leave Administrator shall send out a reminder to the employee, copying the Appointing Authority, reminding the employee of the expiration of his/her FMLA leave and providing options if the employee is unable to return to work at the expiration of his/her leave. This notice should inform the employee of the following options: requesting additional FMLA leave through the FMLA Leave Administrator; requesting an accommodation under the Americans with Disabilities Act through DCRC; requesting use of accrued leave through the Appointing Authority; and resigning for medical reasons. If an employee fails to return to work at the expiration of his/her FMLA leave and has not exercised one of the above listed options within 4 workdays, Fulton County may presume that the employee does not plan to return to work and has voluntarily resigned from their employment. However, the Appointing Authority should inform the FMLA Leave Administrator of the employee's failure to return and if the FMLA Leave Administrator determines that the employee has not exhausted all FMLA allotted to him/her for that 12 month period, the FMLA Leave Administrator shall send out an FMLA certification form to the employee via certified mail as provided for in Section IV of this policy. Failure to comply with the certification requirements may result in delay or denial of the leave. Employees are reminded that unapproved absences from work could lead to disciplinary action.

If, upon expiration of the employee's Family and Medical Leave, the employee is not able to return to work and perform the essential functions of his/her position, then that employee shall not automatically be restored to his or her original position or an equivalent position. In this situation, the employee may request to use his/her vacation leave, and/or investigate his/her options under the Americans with Disabilities Act (the "ADA") by contacting the Office of Diversity & Civil Rights Compliance (DCRC). All such requests will be reviewed on a case-by-case basis. If an employee is not able to return to his/her position following FMLA leave due to the inability to perform the essential functions of his/her position and there is no reasonable accommodation that can be provided under the ADA, then the employee may be separated from employment.

"Key employees" as defined in the FMLA, may be subject to reinstatement limitations in some circumstances. If an employee is considered a "key employee," the employee will be notified of the possible limitations on reinstatement at the time the employee requests a leave of absence.

## **VII. Alternative Positions**

When an employee needs intermittent leave or a reduced leave schedule on a foreseeable basis, the Appointing Authority has the right, at his/her sole discretion, to temporarily transfer the employee to an alternative position within the department for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. No employee will be subjected to any reduction of salary as the result of such a temporary reassignment, regardless of the fact that the alternative duties may potentially differ significantly from the employee's regularly assigned duties.

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Upon completion of the employee's need for intermittent leave or a reduced leave schedule, the employee shall be returned to either (i) his/her original position; or (ii) an equivalent position.

### **VIII. Return to Work Certification**

It is the policy of Fulton County that, as condition of returning to work following FMLA leave for the employee's own serious health condition that made the employee unable to perform the employee's job, the employee must obtain and present certification from the employee's health care provider that the employee is able to resume work and can perform the essential functions of the employee's job. For an employee on intermittent FMLA leave, such a release may be required if reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based on the serious health condition for which the employee took the intermittent leave.

At the time an employee is informed of an approved FMLA request, the employee should be provided a copy of a return to work certification, notification that a completed return to work certification is required before the employee may resume work, and a copy of their job description.

### **IX. FMLA and Worker's Compensation**

In many situations, an employee who is taking time off as the result of an injury that is compensable under the County's Worker's Compensation Policy will also be protected by the provisions of the Family and Medical Leave Act. In such an event, the procedures set forth in this policy pertaining to FMLA leave will apply. •

Employees on Worker's Compensation are entitled to choose to either utilize vacation and/or sick leave or to receive payment from Worker's Compensation. Workers who have opted for payment from Worker's Compensation in lieu of utilizing vacation and/or sick leave and who are also on Family and Medical Leave will not be required to utilize their vacation and/or sick leave simultaneously. Moreover, employees may request in writing to use accrued compensatory time, which request will be granted.

### **X. Prohibition of Retaliation**

Fulton County does not condone and will not tolerate, any adverse action being taken against an employee because of that employee's exercise or attempt to exercise his/her rights under the Family and Medical Leave Act. No employee of Fulton County will be subjected to any adverse action because of that employee's bona fide opposition to or complaint about any alleged unlawful practice under the FMLA. Finally, no

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employee will be subjected to any adverse action as a result of giving any information and/or testimony relating to any rights under the FMLA.

## **XI. Confidentiality**

Documents relating to medical certifications, recertifications or medical histories of employees or employees' family members will be maintained separately and treated by Fulton County as confidential medical records, except that in some legally recognized circumstances, the records (or information in them) may be disclosed to supervisors and managers, first aid and safety personnel, government officials or Fulton County's legal counsel.

In addition to any other discipline already outlined in this policy, any employee who violates the confidentiality provisions of this policy could be subject to discipline up to and including termination.

## **XII. Fraudulent Use of FMLA Prohibited**

An employee who fraudulently obtains Family and Medical Leave from Fulton County is not protected by FMLA's job restoration or maintenance of health benefits provisions. In addition, Fulton County will take all available appropriate disciplinary action against such employee due to such fraud.

## **XIII. Additional Documentation and Information**

Fulton County's "Employee Rights and Responsibilities" notice provides additional details regarding employee rights and responsibilities under the FMLA. Employees may obtain a copy of the "Employee Rights and Responsibilities" Notice from the Department of Human Resources Management. Employees should contact the Department of Human Resources Management about any FMLA questions they may have.

These policies do not create a contract of employment. Employment for non-classified employees remains "at will".