

# MEMORANDUM

FROM: Tania L. Proctor, Human Resources Director

SUBJ: Family Medical Leave (FML)

DATE: \_\_\_\_\_

TO: \_\_\_\_\_

CC: Department Director

If you are an employee who has worked for the Village for at least 12 months and worked with us at least 1250 hours during the previous 12 months, you may be eligible for Family Medical Leave.

Please read the attached Managers Standard Operating Procedure. If you believe you are eligible, you must fill out the employee application form and return immediately.

IF YOU ARE OFF LONGER THAN THREE DAYS, DUE TO ANY OF THE REASONS LISTED IN THE MANAGERS STANDARD OPERATING PROCEDURE, OR LISTED ON THE U.S. DEPARTMENT OF LABOR EMPLOYEE RIGHTS AND RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT, YOU MUST COMPLETE THE FAMILY MEDICAL LEAVE INFORMATION. IT IS YOUR RESPONSIBILITY TO RETURN THIS INFORMATION IN A TIMELY MANNER. THIS IS A FEDERAL REGULATION THAT WE MUST FOLLOW.

If you have any questions, please contact the Human Resources Department.

Phone Number (575) 258-4343 ext. 1031

Fax Number (575)258-5848

# Village of Ruidoso

**William P. Morris, Interim Village Manager**

**Manager Standard Operating Procedure**

**313 Cree Meadows Drive · Ruidoso, New Mexico 88345**

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Manager Directive: Family Medical Leave (FMLA)

Number: MSOP - 04-02

Revised February 25, 2009

Effective Date: July 26, 2004

Signed: Original Signed by Village Manager and is filed  
In the Executive Secretary Office

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## **Purpose:**

Village of Ruidoso will comply with the Family and Medical Leave Act implementing Regulations as revised effective January 16, 2009. The Village of Ruidoso will post the mandatory FMLA Notice and upon hire provide all new employees with the notice required by the U. S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical Act. The Village of Ruidoso will also post this information on the Village's website.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

## **Policy:**

FMLA is available to employees who have completed 12 months of service and worked at least 1250 hours in that 12-month period. These hours shall include actual worked hours and any paid leave taken for calculating hours toward service. The 12 weeks of leave within a 12-month will be calculated by the Village as a rolling period, measured from the date the employee first used Family and Medical Leave. This policy covers all extended leaves due to illness, injury, or family leave under the Family and Medical Leave Act (FMLA), including any such leaves granted by the Village.

This policy covers all extended illness and injuries beyond the duration of three working days (1 duty day for Fire). Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Substance abuse is covered when the employee is seeking treatment, and not just impaired by substance abuse.

## **Procedure:**

To be eligible for FMLA, the employee must have a condition that makes them unable to perform essential job functions.

An eligible employee will be granted up to 12 unpaid workweeks of leave during any 12-month period for the following reasons. The 12-month period begins on the first day of the employee's FMLA leave.

1. Because of the birth of a son or daughter and the decision to provide care for that infant;
2. Because of the placement of a son or daughter with the employee for adoption or foster care;
3. In order to care for the spouse, son, daughter, or parent of an employee who has a serious health condition; or
4. Because of a serious health condition that makes the employee unable to perform the essential functions of their job.

In any case where the necessity for FMLA, as provided for under items 1 and 2 above, is foreseeable, and based on an expected birth or child placement, the employee shall provide the Human Resources Department with not less than thirty (30) days notice, before the date leave commences, of the intention to take leave under FMLA. Where the birth date or placement requires the leave to begin in less than 30 days, the employee will inform the Human Resources Department, in writing, as soon as possible.

If a planned medical treatment or operation under items three and four necessitate FMLA, the employee will make a reasonable effort to schedule the treatment so that it is not unduly disruptive to Village operations. Such scheduling is subject to the approval of the appropriate employee's health care provider, or the health care provider of the son, daughter, spouse, or parent of the employee. The employee will also provide the Village with not less than 30 days notice prior to the beginning of the leave. If medical treatment must begin in less than 30 days, the employee is responsible for notifying the Village Human Resources Department as soon as possible.

Employees requesting FMLA for a serious health condition under items 3 and 4 must provide the Village Human Resources Department with written and prompt medical certification that includes the following information:

- a) The date on which the serious health condition started;
- b) The probable duration of the condition; and
- c) The appropriate medical facts from the health care provider regarding the serious health condition.

If an employee must take FMLA to care for a family member, the employee must submit a medical certification to the Human Resources Department about why an eligible employee is needed to care for a son, daughter, spouse, or parent. If the request falls under item 3 above, an estimate of the time needed for the care of that family member will be required.

To take FMLA because the employee is unable to perform the functions of their job, a medical statement is required which addresses items (a) through (c) outlined above.

If the employee is applying for intermittent [(in separate blocks of time (hours, days, weeks)] FMLA, or on a reduced leave schedule (reducing the usual number of hours worked per workweek or workday) for planned medical treatment, the dates and duration of the treatment, as well as a statement about the medical necessity, including items (a) through (c) above must be submitted, in writing, to Human Resources. The same information is required to support an intermittent leave to care for a son, daughter, spouse, or parent with a serious health condition.

If an employee takes intermittent leave that is unpaid or works on a reduced schedule, the Village will reduce the employee's salary based on the amount of time actually worked.

In addition, while the employee is on intermittent or a reduced schedule leave, the Village may temporarily transfer the employee to an available, alternative position, which better accommodates the recurring leave schedule.

When the employee is approved and is placed on FMLA, they must contact the Village Human Resources Department every 30 days regarding the status of the condition, the intention to return work, and/ or if continued leave is necessary.

In the case of employee illness or injury, before being permitted to return from FMLA, employees are required to present to Human Resources Department a note from their physician indicating that they are capable of returning to work.

Where two spouses work for the Village of Ruidoso, they will be allowed a total of 12 weeks between them to take FMLA for the birth of a child, the placement of a child for adoption or foster care, or to care for a son, daughter, spouse, or parent with a serious health condition.

The taking of FMLA does not trigger a qualifying event under COBRA. Thus, health care benefits will be paid during this leave according to the Village's policy. If the employee does not return to work at the end of the leave, all benefits provided by the Village will cease and the employee may be separated from employment by the Village of Ruidoso. Employees who do not return from FMLA may be required to reimburse the Village for all benefits paid by the Village during the FMLA period.

Leave time will not be accrued while an employee is on unpaid FMLA. No holiday pay will be given.

The employee on FMLA is responsible for and must arrange for employee paid deductions to continue during the FMLA leave period. Coverage for employee paid policies may cease if the premium payment is more than 30 days late. If the payment is more than 15 days late, the Village will notify the employee with written notification. Leave time may be used to pay employee deductions.

Accumulated leave time may be used during FMLA, but is not required to be used. The substitution of paid leave time for unpaid leave time does not extend the 12 week FMLA leave period. Further, in no case can the substitution of paid leave time for unpaid FMLA time result in the receipt of more than 100% of the base salary. If the employee chooses to use any accrued compensatory time off balance they have, this time will not be counted towards the 12 weeks of FMLA.

FMLA leave may be extended if the employee has paid leave time remaining at the end of the 12 week period or if approved for extension by the Village Manager or Deputy Village Managers.

For employees who are injured on the job and will be out more than three days, FMLA will run concurrently with Worker's Compensation leave. All rules for FMLA apply. If an employee is offered limited duty under workers' compensation, but opts to take medical leave, the employee will not receive workers' compensation indemnity payments.

FMLA will be tracked by the Human Resources Department according to hours taken. The smallest intermittent time increment is one hour.

An employee who takes leave under this policy will be able to return to the same position or a position with equivalent status, pay, benefits, and other employment terms. The position will be the same or one that is virtually identical in terms of pay, benefits, and working conditions. The Village of Ruidoso is not obligated to return highly compensated employees (i.e., highest paid 10% of employees at a work site) their former or equivalent position following a leave if restoration of employment will cause substantial economic injury to the Village. The Village will make this determination on a case by case basis.

If an employee knowingly falsifies any FMLA document, the employee shall be subject to disciplinary action up to and including termination.

Definitions applicable to FMLA policy above.

- A spouse means a husband or wife as defined or recognized under state law.
- A parent is either the biological parent or the person who acted as the parent when the employee was a child.
- A son or daughter is either biological, adopted, under foster care, a stepchild, a legal ward, or any child that the employee is assuming parenting responsibility. The child must be under age 19 or can be over age 18 if a mental or physical handicap is present.
- A period of incapacity, means the inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from.
- Treatment includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations.
- A serious health condition means an illness, injury, impairment, or physical or mental condition that involves:
  - (1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or
  - (2) A serious health condition involving continuing treatment by a health care provider, including any one or more of the following:
    - A period of incapacity of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
    - Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
    - Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
    - Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
      - a) Any period of incapacity due to pregnancy, or for prenatal care.
      - b) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
        - Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;
        - Continues over an extended period of time (including recurring episodes of a single underlying condition); and
        - May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
      - c) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
      - d) Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a

provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

## **FMLA for Military Service Family**

### Qualifying Exigency Leave

An employee may qualify for up to 12 weeks of leave during a 12 month period due to a qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

Department of Labor (DOL) defines “qualifying exigency” as: 1) short-notice deployment, 2) military events and related 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 where the employer and employee agree to the leave.

- The above FMLA definition of a “son” or “daughter” does not apply since all servicepersons are over age 18.
- Qualifying Exigency must be related to a service member’s “contingency operation.” Contingency operation includes any operation:
  - Designated by the Secretary of Defense in which the armed forces are or may be involved in military actions, operations, or hostilities against an enemy of the U.S.; OR
  - Results in the active duty of members of the Armed Forces during a war or national emergency declared by the President or Congress; OR
  - Action in response to events such as natural disasters, terrorist or subversive activities or required military operations.
  - Intermittent leave is allowed.
- The employer must receive confirmation of the service member’s activation or active duty status and certification from the employee that leave is needed due to the qualifying exigency.

### Service Member Family Leave

An eligible employee who is the spouse, child, parent or next of kin of a covered service member shall be entitled to up to 26 weeks of leave during a 12 month period to care for the service member.

- Covered service members are a member of the Armed Forces, including a member of the National Guard or Reserves, 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. This applies to an injury or illness incurred by the service member in the line of duty or on active duty in the armed forces that may render the member medically unfit to perform their duties.
- The definition of “serious health condition” above does not apply. For service member family leave, serious injury or illness refers to an injury or illness incurred while on active duty in the armed forces which renders the member medically unable to perform the duties of their office, grade, or rating.
- “Next of Kin” is defined as the nearest blood relative to the service member.
- Intermittent leave is allowed.

**VILLAGE OF RUIDOSO**  
**APPLICATION FOR FAMILY AND MEDICAL LEAVE (FMLA)**

Name: \_\_\_\_\_

Department: \_\_\_\_\_ Supervisor: \_\_\_\_\_

Current Home Address (mailing address): \_\_\_\_\_

Current Home Telephone Number: \_\_\_\_\_ Cell Phone \_\_\_\_\_

Alternate Phone Number: \_\_\_\_\_

Anticipated Date for Leave to Begin:     /     /                      Expected Date of Return     /     /

Reason for Leave (check one):

- Birth of a child
- Adoption or foster care of a new child
- Care for spouse, son, daughter, or parent who has a serious health condition
- Serious health condition that makes me unable to perform essential functions of my job
- Military Leave (Select One)
  - Qualifying Exigency Leave
  - Service Member Leave

I understand that FMLA is based on medical necessity of a serious health condition or the serious health condition of spouse, my child, parent, or myself, I am required to submit a Certification of Health Care Provider, completed by the appropriate health provider. The Village of Ruidoso Human Resources Department will provide this form.

I understand that it is my responsibility to provide the information requested by the Village of Ruidoso Human Resources Department in a timely manner. I must make appropriate arrangements prior to my leave with the Village of Ruidoso Human Resources Department as to how I will cover my payroll deductions previously authorized by me (medical insurance coverage, life ins., dental, etc.) during my absence.

I have been provided printed information titled “EMPLOYEE RIGHTS & RESPONSIBILITIES UNDER THE FAMILY AND MEDICAL LEAVE ACT” and applicable portions of the Village of Ruidoso Policies Regarding FMLA to review.

Furthermore, I recognize that this is a notice for family and medical leave that is subject to review. Approval is dependent on timely receipt of appropriate medical documentation completed by authorized medical professional. Taking unapproved leave may result in disciplinary action including and leading up to termination.

I understand that I must keep the Human Resources Department updated on my leave and may be required to provide Human Resources with additional physician's statements as requested attesting to my continued inability to work.

Once my leave begins, I understand that I cannot return to work until I present the Village of Ruidoso Human Resources Department with a note from my physician indicating that I am able of returning to work and stating if any restrictions apply.

Employee's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**ACKNOWLEDGEMENT OF RECEIPT OF REQUEST:**

VOR HR Representative Signature: \_\_\_\_\_ Date: \_\_\_\_\_