

MARKLUND
HUMAN RESOURCES POLICY AND PROCEDURE

POLICY NO: 5.3.1 **PAGE: 1 OF**

11 SUBJECT: FAMILY MEDICAL LEAVE OF
ABSENCE

DEPARTMENTS AFFECTED: ALL **APPROVED BY:**

ISSUE/REVISION DATE: 1-11-94, 7-24-98, 3-15-02, 02-28-07, 09-09-15

EFF. DATE: 8-5-93

- I. **PURPOSE:** Marklund understands that an employee's personal or medical circumstances may require an extended absence from work. This policy is intended to provide a measure of protection against loss of accumulated service and benefits to the employee while minimizing the difficulties an extended absence creates within the department.

II. DEFINITIONS:

Family Medical Leave Act (FMLA) Leave of Absence:

Federal law provides that certain employees may be entitled to up to 12 work weeks of unpaid leave because of a qualifying reason for leave for either the employee or the employee's eligible relative, measured on a rolling 12-month period measured backward from the date that the employee uses his or her FMLA leave. This 12-month period, however, is measured from the date the FMLA leaves commences going forward in situations whereby the employee uses FMLA leave to care for a covered servicemember as clarified below.

III. POLICY AND PROCEDURES:

A. Family Medical Leave Act (FMLA) Absence

What the FMLA provides

The FMLA provides that eligible employees may have up to 12 weeks of unpaid, job-protected leave to eligible employees for the following reasons:

- For an incapacity due to pregnancy, prenatal medical care or child birth;
- To care for the employee's child after birth, or placement for adoption or foster care;
- To care for the employee's spouse, son or daughter, or parent, who has a serious health condition (see Serious Health Condition Defined below);
- For a serious health condition that makes the employee unable to perform the employee's job (see Serious Health Condition Defined below); or
- For any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is a covered military member on active duty in support of a

contingency operation (see Military Family Leave Entitlements below).

The FMLA also requires that Marklund provide up to 26 weeks of unpaid, job protected leave to eligible employees for them to:

- Provide care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember (see Military Family Leave Entitlements below). For definitions related to providing care for a covered servicemember with a serious injury or illness, please see attachment 5.3.1a

FMLA Eligibility and General Guidelines

- The employee must have been employed by Marklund for at least 12 months and have worked at least 1,250 hours in the previous 12 months to be eligible for an FMLA.
- A minimum of 30 days' notice in writing is required unless it is an emergency situation, in which case as much notice as possible is to be given. The request should include the date the leave is to begin, the expected date of return and the reason for requesting the leave. The Human Resources department will provide FMLA request forms. The employee needs to contact the Human Resource's Department.
- Eligible employees may request up to a maximum of 12 weeks (or 60 working days in the case of intermittent leave) of family or medical leave within any 12-month period. If the leave is requested due to the birth or placement of a child and both parents are employees of Marklund, the total leave for both employees combined may not exceed 12 weeks. Marklund will measure the 12-week periods from the date of the employee's first day of FMLA leave. If a husband and wife both work for Marklund and each wishes to take leave to care for a covered injured or ill servicemember, the husband and wife may only take a combined total of 26 weeks of leave.
- Disability leave for the birth of a child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA.
- An employee's PTO time must be used during the FMLA-approved leave of absence. An employee's vested and/or non-vested illness bank would be available for FMLA leaves only due to major medical injury or illness to self. This includes the birth of a baby.
- While on leave of absence, Marklund will continue health insurance, dental insurance, and life insurance on the same basis as if the person had been actively at work provided any required employee contributions are made in a timely manner. The Human Resources department will send to the employee going on a leave a letter outlining his/her leave dates and instructions regarding maintenance of insurance coverage.
- Employees on an FMLA-approved leave will be returned to the same or equivalent position as long as they return to work within the 12-week period.

- If an employee decided not to return to work for reasons other than health conditions or those beyond the employee's control after the leave had expired, Marklund may charge the employee retroactively for the employer's portion of any insurance premiums.
- Under current company policy, the employee pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Finance Department by the last day of each month. 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 employer will provide 15 days' notification prior to the employee's loss of coverage.
- We cannot address every nuance under the law in the policy. Accordingly, employees in need of FMLA leave should consult with Human Resources if they have specific questions or unusual circumstances.

FMLA – Military Family Leave Entitlements

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is both a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his or her duties for which the servicemember is undergoing medical treatment, recuperation or therapy; or is in outpatient status; or is on the temporary disability retired list; or a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness that occurred any time during the five (5) years preceding the date of treatment. This leave entitles the eligible employee to only one 26 week period of leave per covered servicemember, per injury. Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the National Guard or Reserves, or family members of active duty servicemembers, in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include:

- Attending certain military events;
- Arranging for alternative childcare, addressing certain financial and legal arrangements;
- Attending certain counseling sessions; and
- Attending post-deployment reintegration briefings, or in the case of the death of a covered military member, to meet and recover the body and make funeral arrangements.
- Short-notice deployment
- Spending time with covered member who is on short-term temporary rest and recuperation leave

Employees may be eligible for another 26 week period of leave for a different covered servicemember or for a different injury on the same covered servicemember for which an earlier

leave was taken.

FMLA – Serious Health Condition Defined

A serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves either:

- An overnight stay in a medical care facility;
- “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.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:

- Treatment during at least two visits to a health care provider within 30 days of the first day of incapacity;
- One visit and a regimen of continuing treatment;
- Incapacity due to pregnancy; or
- Incapacity due to a chronic condition.

An incapacity exists when the employee or covered family member is unable to work, attend school or perform other regular daily activities due to the serious health condition, treatment of the serious health condition, or recovery from the serious health condition.

Other conditions may meet the definition of continuing treatment. In order to qualify as treatment by a health care provider, the first (or only) in-person treatment visit must take place within seven (7) days of the first day of the employee’s incapacity. If it does not, your request for FMLA will be denied absent extenuating circumstances.

FMLA – Employee Notification Responsibilities

Employees must provide 30 days advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable and must comply with Marklund’s normal call-in procedures.

Employees must provide sufficient information for the employer to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified. Employees also may be required to provide a certification and periodic recertification supporting the need for leave (see Employee’s Certification Responsibilities below).

FMLA – Employee’s Certification Responsibilities:

Marklund requires that an employee provide it with certification from a health care provider or from the military (as appropriate) for any leave taken for any of the following reasons:

- The employee’s own serious health condition;
- To care for a covered family member with a serious health condition;
- For an employee’s request for leave because of a qualifying exigency; or
- To care for a covered servicemember with a serious injury or illness.

After it is requested, it is the employee’s responsibility to return the certification within 15 calendar days to Human Resources. Failure to return this certification to Human Resources may result in the denial of your request for leave.

Moreover, for employees who have their own serious health condition or are caring for the serious health condition of a family member, Marklund may require that the health care provider recertify the status of the serious health condition. As with the initial certification, a recertification must be returned to Human Resources within 15 calendar days. Failure to return the recertification to Human Resources may result in the denial of your request for leave.

FMLA – Certification of the Serious Health Condition of the Employee or the Spouse, Child or Parent of the Employee

Certification of the serious health condition shall include the date when the condition began, its expected duration and a brief statement of treatment. For medical leave for the employee’s own medical condition, the certification must also include a statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee’s position. For a family member who is seriously ill, the certification must include a statement that the patient, the family member, requires assistance and that the employee’s presence would be beneficial or desirable.

If the employee plans to take intermittent leave or work a reduced schedule, the certification must also include dates and the duration of treatment as well as a statement of medical necessity for taking intermittent leave or working a reduced schedule.

Marklund has the right to ask for a second opinion if it has reason to doubt the certification. Marklund will pay for the employee to get a certification from a second doctor, which Marklund will select. If necessary to resolve a conflict between the original certification and the second opinion, Marklund will require the opinion of a third doctor. Marklund and the employee will mutually select the third doctor, and Marklund 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.

A. Specific Guidelines for FMLA Leaves due to Illness/Injury of a Family Member:

1. A serious illness of a child, spouse, parent, or self is any illness, injury,

impairment of physical or mental condition that involves inpatient treatment in a medical facility, or that causes absence from work/school for more than three calendar days and requires continuing medical treatment, or continuing treatment of a chronic or long-term serious or terminal health condition.

2. In the case of a leave request to care for a seriously ill family member (spouse, parent, or child) the health care provider may be asked to Certify that the employee is needed to provide care.
3. Employees must use PTO for FMLAs of this nature. ESB may only be used for injuries or illness to self.

B. In the case of a leave request for a personal illness or injury, the following conditions apply:

1. Employees requesting a leave due to personal illness will be required to provide a physician's statement verifying the illness, its beginning and expected ending dates and, in the case of intermittent leave, the dates and duration of treatments to be given. Marklund may ask for verification of the illness by the nearest Urgent Care facility. In situations where the opinion of the employee's physician and that of the Urgent Care Physician differs, the decision of Urgent Care will prevail.
2. Employees may use their current sick/personal time (for the first three days) and their illness bank time from the first day for leaves of absence due to their own illness/injury.
3. A maternity leave is treated as an FMLA leave due to illness of self and care for the baby. If the employee wishes to remain off the job beyond the period of disability, the provisions of the FMLA allow for up to 12 weeks of leave due to the birth of a child.
4. Employees returning from leaves of absence due to illness/injury must present a physician's release and/or be approved by the Human Resources Manager before being allowed to return to work.

C. Documentation of the Covered Family Member's Call to Active Duty in the Armed Forces

Employees requesting this type of FMLA leave must provide proof of the qualifying family member's or next-of-kin's injury, recovery or need for care. This documentation may be a copy of the military medical information, orders for treatment, or other official Armed Forces communication pertaining to the

servicemember's injury or illness incurred on active military duty.

Employees Intent to Return to Work Responsibilities

While an employee is on FMLA leave it is important that he or she notify the appropriate person at Marklund of any changes in his or her circumstances that could impact employee's return to work. It is the employee's responsibility to notify Marklund within two (2) days of any changes to his or her circumstances where notification is foreseeable. It is also the employee's responsibility to notify Marklund of his or her intent not to return to work following the expiration of the period of leave.

Marklund's Responsibilities

Marklund must inform employees requesting leave whether they are eligible under the FMLA. Marklund has designed a form for this purpose, so that once the employee has sufficiently notified it that he or she has a qualifying reason for FMLA if he or she is eligible for leave the form will be mailed or hand delivered to the employee notifying him or her of their eligibility, responsibilities and rights, as well as additional information regarding the leave. If the employee is not eligible, Marklund will provide the employee with the reason(s) for his or her ineligibility.

Marklund must inform employees if leave will be designated as FMLA protected and the amount of leave counted against the employee's leave entitlement. Marklund has designed a form for this purpose, too, which will be mailed or hand delivered to the employee. If Marklund determines that the leave is not FMLA protected, Marklund will notify the employee accordingly.

Employee's Use of Leave & Intermittent or Reduced Work Schedules

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently or on a reduced leave schedule when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt Marklund's operations. Leave due to qualifying exigencies may also be taken on an intermittent basis.

Marklund may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

For the birth, adoption or foster care of a child, Marklund and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child.

Substitution of Paid Leave for Unpaid Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave. In order to use paid leave for FMLA leave, employees must comply with the employer's normal paid leave policies.

Other Procedures

1. Employees who have not been employed for at least 12 months, or have not worked a minimum of 1,250 hours in the preceding 12 months, are normally ineligible for any leave of absence except in Worker's Compensation cases (see Policy 3.3.3). Requests for exceptions must be clearly documented and must be approved by the Human Resources Director and/or the employees facility Administrator. If applicable an employee may be able to use any accrued PTO or ESB.
2. As soon as an employee requests a leave of any kind, the department manager must notify Human Resources of the nature and expected dates of the leave by initiating a status change. In the case of a leave due to personal injury, attaching the physician's statement indicating the medical reason and dates of leave.
3. FMLA leaves of absence for periods longer than twelve weeks in duration will result in an adjusted hire date for the purpose of certain benefit and seniority calculations.
4. Employees are expected to return to work as soon as their physician releases them, whichever occurs sooner. If they do not return or request an extension on or before the date of the expiration of the leave, it will be assumed that they do not intend to return to work and the employment relationship will be terminated. Employment is normally considered terminated if the employee fails to return on the first regularly scheduled workday after the leave ends.
5. If the employee misrepresents the reason for a leave, the leave will be immediately canceled and employee will be subject to developmental action.
6. A leave of absence will not be granted to an employee for the purpose of taking other employment, including self-employment. An employee on leave who takes such employment will be considered to have resigned without notice as of the original date the leave began.

Marklund will not fail to hire, refuse to hire, discharge, or harass any individual exercising their rights under this policy or otherwise discriminate against any individual exercising their rights under this policy with respect to the compensation, terms, conditions or privileges of employment of the individual, or retaliate against an individual in any form or manner for exercising their rights under this policy.

Attachment to Family Medical Leave of Absence

5.3.1.a

Definitions Related to Providing Care for a Covered Service Member with a Serious Injury or Illness

Issued Date:

In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

- a) A “son or daughter of a covered servicemember” means the covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.
- b) A “parent of a covered servicemember” means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents “in law.”
- c) Under the FMLA, a “spouse” means a husband or wife, including those in same-sex marriages, which were made legal in all 50 United States as of June 26, 2015.
- d) The “next of kin of a covered servicemember” is the nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered servicemember's only next of kin. For example, if a covered servicemember has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered servicemember's next of kin. Alternatively, where a covered servicemember has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered servicemember's next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered servicemember pursuant to § 825.122(k).

“Covered active duty” means:

(a) "Covered active duty" for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country.

(b) (2) *Covered active duty or call to covered active duty status* in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation, in accordance with 29 CR 825.102.

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.

6) Military caregiver leave (also known as covered servicemember leave) to care for an injured or ill servicemember or veteran.

An employee whose son, daughter, parent or next of kin is a covered servicemember may take up to 26 weeks in a single 12-month period to take care of leave to care for that servicemember.

Next of kin is defined as the closest blood relative of the injured or recovering servicemember.

The term "covered servicemember" means:

(a) 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; or

(b) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The term "serious injury or illness means:

(a) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was 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 in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(b) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered servicemember, means a qualifying (as defined by the Secretary of Labor) injury or illness

incurred by a covered servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank or rating.

(c) Outpatient status, with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.