

**RESOLUTION 2008-33**

**A RESOLUTION AMENDING PERSONNEL POLICIES AND PROCEDURES SUBSECTIONS 15.C, 15.D, AND 15.J REGARDING LEAVE**

**WHEREAS**, the Tooele County Commission finds it necessary to revise Personnel Polices and Procedures Sections 15.C, Holidays, and 15.D, Emergency Leave, to ensure consistency with the County's official hours of operation and 15.J, Family and Medical Leave, to comply with updated federal regulations.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOOEELE COUNTY COMMISSION** that Personnel Polices and Procedures Sections 15.C, Holidays; 15.D, Emergency Leave; and 15.J, Family and Medical Leave, are hereby amended to read as attached hereto, which attachment is, by this reference, made a part hereof.

**EFFECTIVE DATE:** This resolution shall take effect immediately upon passage.

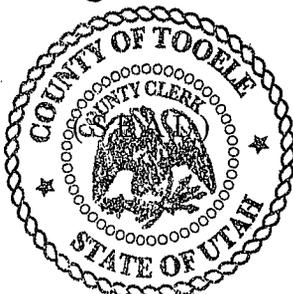
**DATED** this 16<sup>th</sup> day of December 2008.

**ATTEST:**

  
Marilyn K. Gillette, Clerk

**TOOELE COUNTY COMMISSION:**

  
Colleen S. Johnson, Chairman



Commissioner Johnson voted yes  
Commissioner Clegg voted yes  
Commissioner Hurst voted yes

**APPROVED AS TO FORM:**

  
Doug Hogan  
Tooele County Attorney

**SECTION 15**  
**LEAVE**

**C. HOLIDAYS:**

1. The following days are designated as legal paid county holidays:

New Year's Day	-	January 1
Human Rights Day	-	Third Monday of January
Presidents' Day	-	Third Monday of February
Memorial Day	-	Last Monday of May
Independence Day	-	July 4
Pioneer Day	-	July 24
Labor Day	-	First Monday of September
Columbus Day	-	Second Monday of October
Veterans' Day	-	November 11
Thanksgiving Day	-	Fourth Thursday of November
Fourth Friday of November	-	Day After Thanksgiving
Christmas Day	-	December 25

2. Employees shall receive paid holiday leave equal to the employee's regular daily scheduled hours. If the holiday falls on a regularly scheduled day off, such employees shall receive an equivalent workday off equal to the employee's regular scheduled hours.
3. No holiday leave is paid to temporary, seasonal, on-call, or part-time employees working less than 20 hours per week.

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**D. EMERGENCY LEAVE:** Emergency leave with pay may be authorized by the department head in the case of a death in the immediate family for a period not to exceed four working days. "Immediate family" shall mean wife, husband, children, daughter-in-law, son-in-law, parents, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparents, spouse's grandparents, brothers, and sisters of the employee. In the event of the death of other family members, an employee may be authorized emergency leave to attend the funeral for such persons. The number of authorized hours for emergency leave shall not exceed the number of hours the employee was scheduled to work that day. "Other family members" means relatives other than immediate family members, within and including the fifth degree of consanguinity, computed according to the rules of civil law, and also include the spouses of such relatives.

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**J. FAMILY AND MEDICAL LEAVE:**

Tooele County complies with the Family and Medical Leave Act of 1993 (FMLA), as amended, and the expansion of FMLA under The Support for Injured Service Members Act of 2007. The following is a summary of the main provisions of the FMLA. However, it is not a comprehensive recital of the law. Questions or further clarification may be obtained from the Tooele County Human Resource Department.

**1. FMLA ELIGIBILITY**

- a. Employees are eligible for FMLA leave if they have worked for Tooele County for at least 12 months (52 weeks) and worked 1,250 hours of service during the 12-month period immediately before the commencement of the leave.
- b. In determining the 12 months (52 weeks) worked for Tooele County, the 12 months need not be consecutive months. Employment periods prior to a break in service of seven years or more are not counted unless the employee's break in service is occasioned by the fulfillment of his or her National Guard or Reserve military service obligations. The time served performing the military service must be also counted in determining whether the employee has been employed for at least 12 months. For FMLA eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of the week or if the employee is on other paid leave during the week (i.e. sick leave, annual leave, worker's compensation).
- c. Time spent on paid (including worker's compensation payments) or unpaid leave is not counted in determining the 1,250 hours worked for FMLA eligibility purposes. Tooele County will include overtime hours as hours worked on an hour-for-hour basis regardless of whether they were paid out as overtime or as compensatory time.

**2. FMLA DEFINITIONS**

For purposes of this Section, the following terms have the stated meanings:

- a. Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was child. Parent does not include parent-in-law.
- b. Child 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 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" except for FMLA leave due to military service the person does not have to be a minor.
- c. Next-of-kin of a covered service member means the nearest blood relative other than the covered service member's spouse, parent, son, or daughter. The FMLA provides additional definitions regarding next of kin including order or priority or employee's designation of next of kin.

- d. "Serious health condition," for purposes of the FMLA, means an illness, injury, impairment, or physical or mental condition that:
- (1) Requires an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity (meaning the inability to work, attend school or perform other regular daily activities due to the serious health condition treatment therefore, or recovery there from) or any subsequent treatment in connection with such inpatient care;
  - (2) Involves continuing treatment by a healthcare provider for incapacity and treatment. To qualify the incapacity must be for a period of more than three consecutive full calendar days from work, school, or other regular daily activities and include subsequent treatment or period of incapacity relating to the same condition. Subsequent treatment must include 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. Subsequent treatment must occur two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist. Subsequent treatment may be performed by a health care provider, a nurse under direct supervision of a healthcare provider, or by a provider of health care services under orders of, or on referral by, a health care provider;
  - (3) Any period of incapacity due to pregnancy, or for prenatal care;
  - (4) Any period of incapacity (or treatment for such incapacity) due to a chronic serious health condition. A chronic serious health condition is one which (a) requires periodic visits at least twice a year for treatment by a health care provider, or by a nurse under direct supervision of a health care provider; (b) continues over an extended period of time (including recurring episodes of a single underlying condition); and (c) may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
  - (5) A period of incapacity that 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 (e.g., Alzheimer's, stroke, terminal stages of a disease, etc.); or,
  - (6) Any absences to receive multiple treatments (including any period of recovery there from) by, or on referral by, a health care provider for a condition for (a) restorative surgery after an accident or other injury; or (b) a condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), or kidney disease (dialysis).

### 3. BASIC FMLA LEAVE ENTITLEMENT

The FMLA provides up to 12 weeks of job protected leave 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. Leave to care for a child following birth, for adoption, or for foster care must be taken within one year of the birth or placement of the child;
- c. To care for the employee's spouse, child, or parent with a serious health condition; or,
- d. For a serious health condition that makes the employee unable to perform the employee's job.

#### 4. MILITARY FMLA LEAVE ENTITLEMENT

- a. Eligible employees with a spouse, child, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week FMLA 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. The FMLA does provide limitations on the amount of leave that can be used for certain qualifying exigencies.
- b. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single "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 in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. This is the only type of FMLA leave that may extend an employee's leave entitlement beyond 12 weeks to 26 weeks. Other types of FMLA leave are added to this type of leave totaling the 26 weeks. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered service member during this "single 12-month period," the remaining part of his or her 26 workweeks of leave entitlement to care for the covered service member is forfeited.

#### 5. CALCULATION OF 12 WEEKS / 26 WEEKS

- a. **12 Weeks.** In determining eligibility for FMLA leave the County will measure the 12-month period as a rolling 12-month period measured backward from the date an employee's first FMLA use. Each time an employee requests leave, the County will compute the amount of FMLA leave the employee has taken in the last 12 months and subtract it from the 12 weeks of available FMLA leave. The balance remaining will be

the amount the employee is entitled to take at that time. Note that this amount may change with each request for FMLA leave as periods of leave drop from the 12-month look back period resulting in leave coming available to the employee. When an employee's work schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the FMLA leave period is used to calculate the amount of FMLA leave available to the employee.

- b. **26 Weeks.** The "single 12-month period" to care for a covered service member begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date. The "single 12-month period" is applied on a per-covered-service member, per-injury basis. An employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for a different covered service member or to care for the same service member with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any "single 12-month period."

## 6. HUSBAND & WIFE BOTH EMPLOYED BY COUNTY

If a husband and wife both work for Tooele County and each wishes to take FMLA leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for Tooele County and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of FMLA leave during the "single 12-month period." These limitations do not apply where the reason for the leave is the serious health condition of either the husband or wife or the serious health condition of a child. If either the husband or wife is ineligible for FMLA leave, the eligible spouse retains full leave entitlement (i.e. they don't have to split the leave).

## 7. EMPLOYEE BENEFITS DURING FMLA LEAVE

- a. While an employee is on FMLA leave, Tooele County will continue the employee's health, dental, and vision benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.
- b. Retirement, life, and other benefits may be continued based on insurance provider's approval. Generally, continuation of these benefits is contingent upon whether the FMLA leave is paid or unpaid and what sources are paying the employee's wages. Benefit continuation is subject to change based on individual insurance providers' provisions. Employer contributions to the 401K plan will be adjusted and based on wages paid by Tooele County (i.e. does not include unpaid, or worker's compensation wages).
- c. While on **paid** FMLA leave, Tooele County will continue to make payroll deductions to collect any portion of the employee's share of the premiums.

- d. While on **unpaid** FMLA leave, the employee must continue to pay any portion of the employee's share of the health premiums (and any other benefits the employee desires to continue) and may do so in person or by mail. The payment will be due by the 15th day of each month. The employee will be deemed delinquent if the payment is more than 30 days late and alternative payment arrangements have not been made with Tooele County. Failure to make timely premium payments may result in cancellation of benefits. Tooele County may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work, including seeking recovery through civil court. Tooele County may also seek retroactive termination of insurance coverage with the insurance provider. Tooele County may recover from an employee both the employee's and/or employer's share of any premiums paid during a period of **unpaid** FMLA leave if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to: 1) the continuation, recurrence, or onset of either a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered service member, which would otherwise entitle the employee to leave under FMLA; or 2) other circumstances beyond the employee's control.

#### 8. EMPLOYEE STATUS AFTER FMLA LEAVE

- a. An employee who takes FMLA leave 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 virtually identical in terms of pay, benefits and working conditions.
- b. Tooele County may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

#### 9. SUBSTITUTION OF PAID LEAVE AND/OR DISABILITY INSURANCE

- a. **Paid Leave Benefit Substitution.** Tooele County has elected the statutory provision under the FMLA permitting an employer to require employees to take any accrued paid annual, sick leave, or comp-time (i.e. paid FMLA leave or "substitution of paid leave") and have it run concurrently with any FMLA leave, to the extent that the reason for the leave complies with permissible uses as specified in this and other Sections regarding paid leave herein this Manual. Before being eligible for unpaid FMLA leave, an employee is required to substitute any accrued and qualifying paid leave to bring the employee to 100% of his/her wage at the time FMLA starts. In cases of varying schedules, the required substitution will be calculated as the average weekly wage earned during 12 months prior to commencing FMLA leave. While substituting paid leave, an employee must follow the same terms and conditions of the County's policy that apply to other employees for the use of such paid leave.
- b. **Worker's Compensation Substitution.** When substitution occurs and wages are paid in whole or party by a County-sponsored disability insurance provider (i.e. worker's compensation insurance) the employee may elect to, but is not required to, supplement

the insurance payment up to 100% of his/her pre-disability wage. This generally only occurs when FMLA is needed due to the serious medical condition of the employee.

#### 10. INTERMITTENT FMLA LEAVE OR A REDUCED WORK SCHEDULE

- a. An employee may take FMLA intermittently (i.e. take off work in 15 minute increments when needed or a day or two over the year when needed) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 work weeks (or 26 work weeks to care for an injured or ill service member over a "12-month period").
- b. Tooele County 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.
- c. For the birth, adoption or foster care of a healthy child, Tooele County and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced work schedule.
- d. If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with Tooele County before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.
- e. An employee who has been approved for intermittent FMLA-protected leave must specifically reference either the qualifying reason for leave or the need for FMLA leave. Calling in "sick" without providing more information will not be considered sufficient notice to trigger Tooele County's obligations under the Act.

#### 11. PROCEDURE FOR REQUESTING FMLA LEAVE

- a. For (1) The birth of a child or in order to care for that child; or 2) The serious health condition of the employee:
  - (1) An employee must provide at least verbal notice sufficient to make the County aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.
  - (2) Employees must then submit a completed Certification of Health Care Provider Form for Employee's Serious Health Condition.
  - (3) The worker's compensation insurance company's approval of the employee's need to be absent from work will satisfy the need to submit a completed Certification of Health Care Provider for Employee's Serious Health Condition.

- (4) Employees must provide Tooele County with at least 30 days notice prior to the need for leave, if possible. If it is not possible to give 30 days notice, the employee must give as much notice as is practicable. An employee who is to undergo planned medical treatment is required to make a reasonable effort to schedule the treatment in order to minimize disruptions to the workplace. If an employee fails to provide 30 days notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date Tooele County receives notice.
  - (5) While on leave, employees are requested to report periodically to Tooele County regarding the status of the medical condition and their intent to return to work. Tooele County may ask for additional updates.
  - (6) The employee must respond to requests for certification or recertification within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.
  - (7) 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.
  - (8) Tooele County has the right to ask for a second opinion if it has reason to doubt the certification. Tooele County will pay for the employee to get a certification from a second doctor, which the company will select. If necessary to resolve a conflict between the original certification and the second opinion, Tooele County will require the opinion of a third doctor. Tooele County and the employee will mutually select the third doctor, and the company 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.
- b. To care for a spouse, child or parent with a serious health condition:
- (1) An employee must provide at least verbal notice sufficient to make the County aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.
  - (2) Employees must then submit a complete Certification of Health Care Provider for Family Member's Serious Health Condition.
  - (3) Employees must provide Tooele County with at least 30 days notice prior to the need for leave, if possible. If it is not possible to give 30 days notice, the employee must give as much notice as is practicable. If an employee fails to provide 30 days notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date Tooele County receives notice.

- (4) While on leave, employees are requested to report periodically to Tooele County regarding the status of the medical condition and their intent to return to work. Tooele County may ask for additional updates.
  - (5) The employee must respond to requests for certification or recertification within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.
  - (6) 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.
- c. The placement of a child for adoption or foster care and to care for the newly placed child:

An employee must provide at least verbal notice sufficient to make the County aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.

- d. For a Qualifying Exigency for Military Family Leave:
- (1) An employee must provide at least verbal notice sufficient to make the County aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.
  - (2) Employees requesting this type of FMLA leave must also submit a completed Certification of a Qualifying Exigency for FMLA Military Family Leave Form. If such leave is foreseeable, employees are asked to provide as much notice as possible to Tooele County.
- e. To Care for an injured or ill service member:
- (1) An employee must provide at least verbal notice sufficient to make the County aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.
  - (2) Employees requesting this type of FMLA leave must submit a complete Certification for Serious Injury or Illness of Covered Servicemember – for FMLA Military Family Leave Form. If such leave is foreseeable, employees are asked to provide as much notice as possible to Tooele County.

## 12. DESIGNATING LEAVE AS FMLA LEAVE

- a. Absent extenuating circumstances Tooele County will inform the employee, in writing, of the designation of leave as FMLA-qualifying leave within five business days after

receipt of notification of the need for leave and if applicable, receipt of completed required documentation.

- b. While leave is in progress or if upon returning from leave Tooele County learns that the reason for leave was an FMLA-qualifying reason, Tooele County may retroactively designate such leave while the leave is in progress or within two business days of the employee's return to work.

**SECTION 15  
LEAVE**

**C. HOLIDAYS:**

1. The following days are designated as legal paid county holidays:

New Year's Day	-	January 1
Human Rights Day	-	Third Monday of January
Presidents' Day	-	Third Monday of February
Memorial Day	-	Last Monday of May
Independence Day	-	July 4
Pioneer Day	-	July 24
Labor Day	-	First Monday of September
Columbus Day	-	Second Monday of October
Veterans' Day	-	November 11
Thanksgiving Day	-	Fourth Thursday of November
Fourth Friday of November	-	Day After Thanksgiving
Christmas Day	-	December 25

2. ~~Full-time e~~Employees shall ~~accrue eight hours of paid holiday leave on holidays, not to exceed 96 hours per calendar year, with the following exceptions: receive paid holiday leave equal to the employee's regular daily scheduled hours.~~

a. ~~Employees working in half-time or three-quarter time positions will receive paid holiday leave equal to the employee's regular daily scheduled hours.~~

b. ~~Employees working a flexible work schedule mandated by their Department Head or Elected Official and approved by the county commission shall receive paid holiday leave equal to the employee's regular daily scheduled hours. If the holiday falls on a regularly scheduled day off, such employees shall receive an equivalent workday off equal to the employee's regular scheduled hours.~~

3. No holiday leave is paid to temporary, seasonal, on-call, or part-time employees working less than 20 hours per week.

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**D. EMERGENCY LEAVE:** Emergency leave with pay may be authorized by the department head in the case of a death in the immediate family for a period not to exceed four working days. "Immediate family" shall mean wife, husband, children, daughter-in-law, son-in-law, parents, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparents, spouse's grandparents, brothers, and sisters of the employee. In the event of the death of other family members, an employee may be authorized ~~up to eight hours of~~ emergency leave to attend the

funeral for such persons. The number of authorized hours for emergency leave shall not exceed the number of hours the employee was scheduled to work that day. "Other family members" means relatives other than immediate family members, within and including the fifth degree of consanguinity, computed according to the rules of civil law, and also include the spouses of such relatives.

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**J. FAMILY AND MEDICAL LEAVE:**

1. ~~It is the purpose of Subsection J. to define and establish Tooele County's policy and procedure with regard to the Family and Medical Leave Act (FMLA) of 1993, as amended.~~
2. ~~County employees who have been employed for at least one year and for at least 1,250 hours during the preceding 12-month period are eligible for family and medical leave. For employees not eligible for family and medical leave, the county commission may review public policy considerations and the individual circumstances involved. Employees will be returned to the same or to an equivalent position at the end of the leave period granted pursuant to this policy.~~
3. ~~Family or medical leave will consist of appropriate accrued paid leave and unpaid leave. If leave is requested, the employee must use all of his or her accrued paid leave, including annual leave and sick leave. The remainder of the leave period will then consist of unpaid leave.~~
4. ~~Employees who meet the applicable time of service requirements may be granted family and medical leave consisting of appropriate accrued paid leave and unpaid leave for a period of 12 weeks during the 365 days following the invocation of FMLA leave for the following reasons:~~
  - a. ~~the birth of the employee's child and in order to care for the child;~~
  - b. ~~the placement of a child with the employee for adoption or foster care;~~
  - c. ~~to care for a spouse, child, or parent who has a serious health condition; or~~
  - d. ~~a serious health condition that renders the employee incapable of performing the functions of his or her job;~~
  - e. ~~because of any qualifying exigency (as the Secretary shall, by regulation, determine) 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.~~

- ~~—5. The entitlement to leave for the birth or placement of a child for adoption or foster care will expire 12 months from the date of the birth or placement.~~
- ~~—6. An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall only be available during a single 12-month period.~~
- ~~—7. During the single 12-month period described in paragraph (6), an eligible employee shall be entitled to a combined total of 26 workweeks of leave under paragraphs (4) and (6). Nothing in this paragraph shall be construed to limit the availability of leave under paragraph (4) during any other 12-month period.~~
- ~~—8. In all cases, an employee requesting leave under this policy must complete an "Application for Family and Medical Leave" and return it to their supervisor or department head with a copy to the Human Resource Director. The completed application must state the reason for the leave, the duration of the leave, and the starting and ending dates of the leave.~~
- ~~—9. An employee intending to take family or medical leave because of an expected birth or placement, or because of a planned medical treatment, must submit an application for leave at least 30 days before the leave is to begin. If leave is to begin within 30 days, an employee must give notice to the supervisor or department head as soon as the necessity for the leave arises.~~
- ~~—10. An application for leave based on the serious health condition of the employee or the employee's spouse, child, or parent must also be accompanied by a "Medical Certification Statement" completed by a health care provider. The certification must state the date on which the health condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition.~~
- ~~—11. If the employee is needed to care for a spouse, child, or parent, the certification must so state, along with an estimate of the amount of time the employee will be needed. If the employee has a serious health condition, the certification must state that the employee cannot perform the functions of his or her job.~~
- ~~—12. During a period of family or medical leave, an employee will be retained on Tooele County's health plan under the same conditions that applied before leave commenced. To continue health coverage, the employee must continue to make any contributions that he or she made to the plan before taking leave. Failure of the employee to pay his or her share of the health insurance premium may result in loss of coverage. If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse Tooele County for payment of health insurance premiums during the family leave, unless the reason the employee fails to return is the presence of a serious health condition which prevents the employee from performing his or her job or for circumstances beyond the employee's control.~~

- ~~13. An employee is not entitled to the accrual of any seniority or other employment benefits during any period of unpaid family or medical leave. However, an employee who takes family or medical leave will not lose any employment benefits that accrued before the date leave began.~~
- ~~14. An employee eligible for family and medical leave will be restored to his or her former position or to a position with equivalent pay, benefits, and other terms and conditions of employment. Tooele County cannot guarantee that an employee will be returned to his or her original job. A determination as to whether a position is an "equivalent position" will be made by the Human Resource Director and the county commission.~~
- ~~15. An employee must complete a "Notice of Intention to Return From Family or Medical Leave" before he or she can be returned to active status. If an employee wishes to return to work prior to the expiration of a family or medical leave of absence, notification must be given to the employee's supervisor or department head at least five working days prior to the employee's planned return.~~
- ~~16. The failure of an employee to return to work upon the expiration of a family or medical leave of absence will subject the employee to immediate termination unless an extension is granted. An employee who requests an extension of family leave or medical leave due to the continuation, recurrence, or onset of her or his own serious health condition, or of the serious health condition of the employee's spouse, child, or parent, must submit a request for an extension, in writing, to the employee's immediate supervisor or department head. This written request should be made as soon as the employee realizes that she or he will not be able to return at the expiration of the leave period.~~
- ~~17. Applications for family or medical leave, medical certification statements, and other notices shall be on forms approved and prepared by the Human Resource Director.~~

Tooele County complies with the Family and Medical Leave Act of 1993 (FMLA), as amended, and the expansion of FMLA under The Support for Injured Service Members Act of 2007. The following is a summary of the main provisions of the FMLA. However, it is not a comprehensive recital of the law. Questions or further clarification may be obtained from the Tooele County Human Resource Department.

#### 1. FMLA ELIGIBILITY

- a. Employees are eligible for FMLA leave if they have worked for Tooele County for at least 12 months (52 weeks) and worked 1,250 hours of service during the 12-month period immediately before the commencement of the leave.
- b. In determining the 12 months (52 weeks) worked for Tooele County, the 12 months need not be consecutive months. Employment periods prior to a break in service of seven years or more are not counted unless the employee's break in service is occasioned by the fulfillment of his or her National Guard or Reserve military service obligations. The time served performing the military service must be also counted in determining whether the

employee has been employed for at least 12 months. For FMLA eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of the week or if the employee is on other paid leave during the week (i.e. sick leave, annual leave, worker's compensation).

- c. Time spent on paid (including worker's compensation payments) or unpaid leave is not counted in determining the 1,250 hours worked for FMLA eligibility purposes. Tooele County will include overtime hours as hours worked on an hour-for-hour basis regardless of whether they were paid out as overtime or as compensatory time.

## 2. FMLA DEFINITIONS

For purposes of this Section, the following terms have the stated meanings:

- a. Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was child. Parent does not include parent-in-law.
- b. Child 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 18, or age 18 or older and "incapable of self-care because of a mental or physical disability" except for FMLA leave due to military service the person does not have to be a minor.
- c. Next-of-kin of a covered service member means the nearest blood relative other than the covered service member's spouse, parent, son, or daughter. The FMLA provides additional definitions regarding next of kin including order or priority or employee's designation of next of kin.
- d. "Serious health condition," for purposes of the FMLA, means an illness, injury, impairment, or physical or mental condition that:
- (1) Requires an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity (meaning the inability to work, attend school or perform other regular daily activities due to the serious health condition treatment therefore, or recovery there from) or any subsequent treatment in connection with such inpatient care;
  - (2) Involves continuing treatment by a healthcare provider for incapacity and treatment. To qualify the incapacity must be for a period of more than three consecutive full calendar days from work, school, or other regular daily activities and include subsequent treatment or period of incapacity relating to the same condition. Subsequent treatment must include 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. Subsequent treatment must occur two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist. Subsequent treatment may be performed by a health care provider, a nurse under

direct supervision of a healthcare provider, or by a provider of health care services under orders of, or on referral by, a health care provider;

- (3) Any period of incapacity due to pregnancy, or for prenatal care;
- (4) Any period of incapacity (or treatment for such incapacity) due to a chronic serious health condition. A chronic serious health condition is one which (a) requires periodic visits at least twice a year for treatment by a health care provider, or by a nurse under direct supervision of a health care provider; (b) continues over an extended period of time (including recurring episodes of a single underlying condition); and (c) may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.);
- (5) A period of incapacity that 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 (e.g., Alzheimer's, stroke, terminal stages of a disease, etc.); or,
- (6) Any absences to receive multiple treatments (including any period of recovery there from) by, or on referral by, a health care provider for a condition for (a) restorative surgery after an accident or other injury; or (b) a condition that would likely result in a period of incapacity of more than three consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.) severe arthritis (physical therapy), or kidney disease (dialysis).

### 3. BASIC FMLA LEAVE ENTITLEMENT

The FMLA provides up to 12 weeks of job protected leave 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. Leave to care for a child following birth, for adoption, or for foster care must be taken within one year of the birth or placement of the child;
- c. To care for the employee's spouse, child, or parent with a serious health condition; or,
- d. For a serious health condition that makes the employee unable to perform the employee's job.

### 4. MILITARY FMLA LEAVE ENTITLEMENT

- a. Eligible employees with a spouse, child, or parent on active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation may use their 12-week FMLA 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. The FMLA does provide limitations on the amount of leave that can be used for certain qualifying exigencies.

- b. FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered service member during a single “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 in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list. This is the only type of FMLA leave that may extend an employee’s leave entitlement beyond 12 weeks to 26 weeks. Other types of FMLA leave are added to this type of leave totaling the 26 weeks. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered service member during this “single 12-month period,” the remaining part of his or her 26 workweeks of leave entitlement to care for the covered service member is forfeited.

#### 5. CALCULATION OF 12 WEEKS / 26 WEEKS

- a. **12 Weeks.** In determining eligibility for FMLA leave the County will measure the 12-month period as a rolling 12-month period measured backward from the date an employee’s first FMLA use. Each time an employee requests leave, the County will compute the amount of FMLA leave the employee has taken in the last 12 months and subtract it from the 12 weeks of available FMLA leave. The balance remaining will be the amount the employee is entitled to take at that time. Note that this amount may change with each request for FMLA leave as periods of leave drop from the 12-month look back period resulting in leave coming available to the employee. When an employee’s work schedule varies from week to week, a weekly average of the hours worked over the 12 weeks prior to the beginning of the FMLA leave period is used to calculate the amount of FMLA leave available to the employee.
- b. **26 Weeks.** The “single 12-month period” to care for a covered service member begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date. The “single 12-month period” is applied on a per-covered-service member, per-injury basis. An employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for a different covered service member or to care for the same service member with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any “single 12-month period.”

#### 6. HUSBAND & WIFE BOTH EMPLOYED BY COUNTY

If a husband and wife both work for Tooele County and each wishes to take FMLA leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent with a serious health condition, the husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for Tooele County and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of FMLA leave during the "single 12-month period." These limitations do not apply where the reason for the leave is the serious health condition of either the husband or wife or the serious health condition of a child. If either the husband or wife is ineligible for FMLA leave, the eligible spouse retains full leave entitlement (i.e. they don't have to split the leave).

## 7. EMPLOYEE BENEFITS DURING FMLA LEAVE

- a. While an employee is on FMLA leave, Tooele County will continue the employee's health, dental, and vision benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.
- b. Retirement, life, and other benefits may be continued based on insurance provider's approval. Generally, continuation of these benefits is contingent upon whether the FMLA leave is paid or unpaid and what sources are paying the employee's wages. Benefit continuation is subject to change based on individual insurance providers' provisions. Employer contributions to the 401K plan will be adjusted and based on wages paid by Tooele County (i.e. does not include unpaid, or worker's compensation wages).
- c. While on **paid** FMLA leave, Tooele County will continue to make payroll deductions to collect any portion of the employee's share of the premiums.
- d. While on **unpaid** FMLA leave, the employee must continue to pay any portion of the employee's share of the health premiums (and any other benefits the employee desires to continue) and may do so in person or by mail. The payment will be due by the 15th day of each month. The employee will be deemed delinquent if the payment is more than 30 days late and alternative payment arrangements have not been made with Tooele County. Failure to make timely premium payments may result in cancellation of benefits. Tooele County may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work, including seeking recovery through civil court. Tooele County may also seek retroactive termination of insurance coverage with the insurance provider. Tooele County may recover from an employee both the employee's and/or employer's share of any premiums paid during a period of **unpaid** FMLA leave if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to: 1) the continuation, recurrence, or onset of either a serious health condition of the employee or the employee's family member, or a serious injury or illness of a covered service member, which would otherwise entitle the employee to leave under FMLA; or 2) other circumstances beyond the employee's control.

## 8. EMPLOYEE STATUS AFTER FMLA LEAVE

- a. An employee who takes FMLA leave 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 virtually identical in terms of pay, benefits and working conditions.
- b. Tooele County may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

## 9. SUBSTITUTION OF PAID LEAVE AND/OR DISABILITY INSURANCE

- a. **Paid Leave Benefit Substitution.** Tooele County has elected the statutory provision under the FMLA permitting an employer to require employees to take any accrued paid annual, sick leave, or comp-time (i.e. paid FMLA leave or “substitution of paid leave”) and have it run concurrently with any FMLA leave, to the extent that the reason for the leave complies with permissible uses as specified in this and other Sections regarding paid leave herein this Manual. Before being eligible for unpaid FMLA leave, an employee is required to substitute any accrued and qualifying paid leave to bring the employee to 100% of his/her wage at the time FMLA starts. In cases of varying schedules, the required substitution will be calculated as the average weekly wage earned during 12 months prior to commencing FMLA leave. While substituting paid leave, an employee must follow the same terms and conditions of the County’s policy that apply to other employees for the use of such paid leave.
- b. **Worker’s Compensation Substitution.** When substitution occurs and wages are paid in whole or party by a County-sponsored disability insurance provider (i.e. worker’s compensation insurance) the employee may elect to, but is not required to, supplement the insurance payment up to 100% of his/her pre-disability wage. This generally only occurs when FMLA is needed due to the serious medical condition of the employee.

## 10. INTERMITTENT FMLA LEAVE OR A REDUCED WORK SCHEDULE

- a. An employee may take FMLA intermittently (i.e. take off work in 15 minute increments when needed or a day or two over the year when needed) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 work weeks (or 26 work weeks to care for an injured or ill service member over a “12-month period”).
- b. Tooele County 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.
- c. For the birth, adoption or foster care of a healthy child, Tooele County and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced work schedule.
- d. If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with

Tooele County before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

- e. An employee who has been approved for intermittent FMLA-protected leave must specifically reference either the qualifying reason for leave or the need for FMLA leave. Calling in "sick" without providing more information will not be considered sufficient notice to trigger Tooele County's obligations under the Act.

## 11. PROCEDURE FOR REQUESTING FMLA LEAVE

- a. For (1) The birth of a child or in order to care for that child; or 2) The serious health condition of the employee:
  - (1) An employee must provide at least verbal notice sufficient to make the County aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.
  - (2) Employees must then submit a completed Certification of Health Care Provider Form for Employee's Serious Health Condition.
  - (3) The worker's compensation insurance company's approval of the employee's need to be absent from work will satisfy the need to submit a completed Certification of Health Care Provider for Employee's Serious Health Condition.
  - (4) Employees must provide Tooele County with at least 30 days notice prior to the need for leave, if possible. If it is not possible to give 30 days notice, the employee must give as much notice as is practicable. An employee who is to undergo planned medical treatment is required to make a reasonable effort to schedule the treatment in order to minimize disruptions to the workplace. If an employee fails to provide 30 days notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date Tooele County receives notice.
  - (5) While on leave, employees are requested to report periodically to Tooele County regarding the status of the medical condition and their intent to return to work. Tooele County may ask for additional updates.
  - (6) The employee must respond to requests for certification or recertification within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.
  - (7) 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.

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

b. To care for a spouse, child or parent with a serious health condition:

- (1) An employee must provide at least verbal notice sufficient to make the County aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.
- (2) Employees must then submit a complete Certification of Health Care Provider for Family Member's Serious Health Condition.
- (3) Employees must provide Tooele County with at least 30 days notice prior to the need for leave, if possible. If it is not possible to give 30 days notice, the employee must give as much notice as is practicable. If an employee fails to provide 30 days notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date Tooele County receives notice.
- (4) While on leave, employees are requested to report periodically to Tooele County regarding the status of the medical condition and their intent to return to work. Tooele County may ask for additional updates.
- (5) The employee must respond to requests for certification or recertification within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave.
- (6) 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.

c. The placement of a child for adoption or foster care and to care for the newly placed child:

An employee must provide at least verbal notice sufficient to make the County aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.

d. For a Qualifying Exigency for Military Family Leave:

- (1) An employee must provide at least verbal notice sufficient to make the County aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.
- (2) Employees requesting this type of FMLA leave must also submit a completed Certification of a Qualifying Exigency for FMLA Military Family Leave Form. If such leave is foreseeable, employees are asked to provide as much notice as possible to Tooele County.

e. To Care for an injured or ill service member:

- (1) An employee must provide at least verbal notice sufficient to make the County aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave.
- (2) Employees requesting this type of FMLA leave must submit a complete Certification for Serious Injury or Illness of Covered Servicemember – for FMLA Military Family Leave Form. If such leave is foreseeable, employees are asked to provide as much notice as possible to Tooele County.

12. DESIGNATING LEAVE AS FMLA LEAVE

- a. Absent extenuating circumstances Tooele County will inform the employee, in writing, of the designation of leave as FMLA-qualifying leave within five business days after receipt of notification of the need for leave and if applicable, receipt of completed required documentation.
- b. While leave is in progress or if upon returning from leave Tooele County learns that the reason for leave was an FMLA-qualifying reason, Tooele County may retroactively designate such leave while the leave is in progress or within two business days of the employee's return to work.