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	<i>Subject:</i>	FAMILY & MEDICAL LEAVE	Revised	1/1/09

## **POLICY**

It is the policy of Johns Hopkins Home Care Group (JHHCG) to comply with all applicable provisions of the Family and Medical Leave Act of 1993, as amended (FMLA). FMLA requires employers to provide eligible employees with unpaid, job-protected leave. The use of FMLA leave will not count against an employee for purposes of attendance or discipline policies. The following types of leave are available:

### **GENERAL FMLA LEAVE**

An employee who meets the eligibility requirements may take up to 12 workweeks of leave in a 12-month period for the following reasons:

1. The birth of the employee's child, and to care for the newborn child;
2. The placement of a child with the employee for adoption or foster care;
3. The employee is needed to care for the employee's child, spouse, or parent who has a serious health condition; or
4. The employee is unable to perform the functions of the employee's job because of the employee's serious health condition.

### **MILITARY FAMILY LEAVE: QUALIFYING EXIGENCY LEAVE**

An employee who meets the eligibility requirements may take up to 12 workweeks of the general FMLA leave entitlement to address any of the following qualifying exigencies that arise out of the fact that the employee's spouse, child or parent is a covered military member:

1. Short-notice deployment;
2. Military events and related activities;
3. Childcare and school activities;
4. Financial and legal arrangements;
5. Counseling;
6. Rest and recuperation;
7. Post-deployment activities; or
8. Additional activities agreed to by JHHCG and the employee.


### **MILITARY FAMILY LEAVE: CAREGIVER LEAVE**

An employee who meets the eligibility requirements and is the spouse, child, parent, or next of kin of a covered service member may take up to 26 workweeks of leave during a single 12-month period to care for the covered service member to provide physical and psychological care and comfort. JHHCG may require documentation to confirm the family and/or blood relationship.

## **ELIGIBILITY**

All employees are eligible for FMLA if they

1. have worked for JHHCG for at least 12 months in the last seven years, and
2. have been employed for at least 1,250 hours of service during the 12 month period immediately preceding the start of leave. Eligibility determination will be made based

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on the date leave starts.

### **DESIGNATION OF FMLA LEAVE AND NOTIFICATION**

JHHCG is responsible for designating an absence as FMLA-qualifying. The employee may not elect to waive the FML benefit. The employee must provide sufficient information for JHHCG to determine whether leave must be designated as FMLA leave. FMLA forms are available in the Department of Human Resources. Within five business days of receiving the required forms, absent extenuating circumstances, the manager will notify the employee whether the leave will be counted as FMLA leave. JHHCG will provide written notice of the designation.

If the FMLA request is foreseeable and based on planned medical treatment, employees are required to their notify their supervisor and make every reasonable effort to schedule the treatment so as not to unduly disrupt the operations of JHHCG.

### **INCREMENTS OF INTERMITTENT OR REDUCED SCHEDULE LEAVE**

Intermittent or reduced schedule leave, that is documented as medically necessary, may be taken in one-hour increments. Requests for intermittent or reduced schedule leave may result in a temporary transfer to an alternative or part-time position that better accommodates recurring periods of leave.

### **DEFINITIONS**


**Spouse:** Lawful husband or wife as defined under state law where the employee resides, including common law marriage in states where it is recognized.

**Child (also referred to as Son or Daughter):** 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 years of age, or age 18 or older and who is incapable of self-care because of a mental or physical disability.

**Parent:** The biological parent of an employee, legal guardian or an individual who stood in loco parentis to an employee when the employee was a child. An employee is limited to leave for two parents. Parents-in-law are excluded.

**Parent of a Covered Service member:** A covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member. This term does not include parents "in law."

**Next of Kin:** A covered service member's nearest blood relative, other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her

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nearest blood relative for purposes of military-caregiver leave under FMLA, in which case the designated individual shall be deemed to be the covered service member's next of kin.

**Chronic Serious Health Condition:** A period of incapacity or treatment for such incapacity due to a "chronic" serious health condition which:

1. requires periodic visits for treatment by or under the direct supervision of a health care provider,
2. continues over an extended period of time, and (3) may involve occasional episodic recurrences of incapacity. Periodic visits are defined as at least two visits each year for the same condition.

**Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

**Inpatient Care:** 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.

**Incapacity:** The inability to work, attend school or perform other regular daily activities due to the serious health condition, or due to treatment for or recovery from the condition.


**Continuing Treatment by a Health Care Provider:** Any one of the following constitutes as "continuing treatment by a health care provider".

1. A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves: (1) treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist, or (2) treatment that results in a regimen of continuing treatment under the supervision of the health care provider;
2. Any period of incapacity due to pregnancy or for prenatal care;
3. Any period of incapacity or treatment due to a chronic serious health condition;
4. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective; or
5. Any period of absence to receive multiple treatments (including any period of recovery).

**Health Care Provider:** A doctor of medicine or osteopathy authorized to practice medicine or surgery, podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, physician assistant, nurse midwife and others determined by the Secretary of Labor. Contact the Department of Human Resources for additional information.

### **DURATION AND EXTENSION**

For full time employees, FMLA may not exceed 12 weeks in a 12 month period (unless the time has been approved for Military Caregiver Leave) measured backward from the date an employee uses any Family and Medical Leave. For part time employees, Family and Medical Leave will be granted on a prorated basis. Family and Medical Leave must be concluded within 12 calendar months after the birth or adoption of a child, or after the placement of a foster child with the employee.

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Family and Medical Leave will run concurrently with the following:

1. the use of accrued paid leave (i.e., sick, vacation, personal and holiday time), and
2. a period of short term disability (STD),
3. while receiving workers compensation benefits

Once all FMLA leave has been exhausted, the supervisor may grant an unpaid leave of absence. Please refer to Policy 107 - Unpaid Leave of Absence Policy. An unpaid leave of absence does not provide job protection.

## **TYPES OF FAMILY AND MEDICAL LEAVE**


### **Pregnancy, Birth, and Caring for the Newborn**

1. The mother is entitled to FMLA leave for the birth of her child or to bond with a healthy newborn child. The mother is also entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of a child.
2. The husband is entitled to FMLA leave if needed to care for his pregnant, incapacitated spouse, to care for his spouse during prenatal care, or to care for his spouse who has a serious health condition following the birth of the child.
3. Leave may be taken only within 12 months of the birth of the child.
4. If the birth mother and the father are employed by JHHCG, their aggregate leave is limited to 12 weeks under FML.
5. To use intermittent or reduced schedule leave to be with a healthy newborn, the supervisor's consent is required.

### **Placement of a Child for Adoption or Foster Care**

1. Employees may use sick leave (up to a maximum of six weeks), if available, vacation and/or personal time for leave due to the adoption of a child or the Foster Care of a child. Employees may use vacation for leave due to the adoption of a child or the Foster care of a child. If vacation and/or personal time is exhausted, the employee is eligible for a leave of absence without pay.
2. Leave may be taken only within 12 months of the placement of the child.
3. If both parents are employed by JHHCG, their aggregate leave is limited to 12 weeks under FML. If the parents cannot agree on the leave taken by each, JHHCG will base the decision on the reason for the request, length of service of the employees and impact on JHHCGs' operations.
4. To use intermittent or reduced schedule leave for the placement of a healthy child, the supervisor's consent is required.
5. The employee must provide written evidence of the placement. In the case of foster care, documentation of state action is required.


### **Employee's Serious Health Condition**

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**Serious Health Condition of the Employee's spouse, son, daughter or parent.**

**Military Family Leave: Caregiver Leave**

To be considered covered, the employee's family member must be a member of the Armed Forces, 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. Military caregiver leave may not be used to care for a former member of the Armed Forces, National Guard or Reserves, or for a member who is on the permanent disability retired list.

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**Military Family Leave: Qualifying Exigency Leave**

To be considered covered, the employee's family member must be a member of the Reserve component; a member of the Ready Reserve, Selected Reserve, or the Individual Ready Reserve; a member of the National Guard; or a retired member of the Regular Armed Forces or Reserves. If the covered military member is a member of the Regular Armed Forces, the employee is not eligible for qualifying exigency leave.

**MEDICAL CERTIFICATION AND RECERTIFICATION, CERTIFICATION OF QUALIFYING EXIGENCIES, AND DOCUMENTATION OF FAMILY RELATIONSHIPS**

JHHCG requires leave to care for the employee's covered family member who has a serious health condition or leave for the employee's own serious health condition to be supported by a certification. An employee must provide written certification within 15 calendar days of JHHCG's request, unless it is not practical under the circumstance despite the employee's diligent, good faith efforts. If the employee does not provide certification or does not provide adequate certification after the opportunity to secure the certification, FMLA leave may be denied.

Recertification may be requested no more often than every 30 days if an employee asks for an extension, circumstances have changed, or the employer receives information that casts doubt on the reason for an absence of the continuing validity of the certification. Recertification does not apply to qualifying exigency leave or military caregiver leaves.

**MEDICAL OPINIONS**


JHHCG may, at its own expense, require a second medical opinion by a health care provider, mutually agreed upon by the employee and JHHCG designated by JHHCG who is not employed by JHHCG, does not regularly contract with or does not otherwise use regularly. In the event of conflicting opinions, JHHCG may pay for a third and final provider, mutually agreed upon by the employee and Hopkins, to offer a binding decision.

**EMPLOYEE BENEFITS**

While on FMLA an employee who is eligible for sick, vacation, and/or personal time benefits, must use and charge absence accordingly. When sick, vacation, and/or personal time are no longer available, the employee is placed on leave of absence without pay. An employee on FMLA who is not receiving a regular paycheck, is responsible for making direct payment of the employee's portion of insurance premiums to JHHCG to continue health, dental, long term disability, life insurance and other benefits at the employee's current contribution level. Failure to make timely payment may result in loss of coverage. Only the portion of leave time that is paid will accrue towards benefits and seniority.

**RETURN TO WORK**

At the end of the Family and Medical Leave period, an employee will be reinstated consistent with THE provisions of FMLA which states that employees must be returned to their prior position or an equivalent

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position with equivalent benefits, pay, and other terms and conditions of employment, unless they would otherwise have been laid off. Employees returning from FML for their own illness/injury are required to be cleared by Occupational Health before beginning/returning to work if the leave is for five consecutive days or longer.

### **KEY EMPLOYEE**

JHHCG may deny reinstatement to certain “highly compensated” employees, who are among the highest paid 10 percent of employees employed by JHHCG if:

1. the denial of restoration is necessary to prevent substantial and, grievous economic injury to JHHCG's operation;
2. JHHCG notifies the affected employee of the intent to deny reinstatement at the time the determination that such economic injury would occur is made; and
3. if the leave has commenced, the employee elects not to return to work after receiving such notice.

### **ABUSE OF FMLA**

The following situations may constitute abuse of FML and are subject to JHHCG's disciplinary policies:

1. Failure to return to work at the end of the approved leave period, except when a leave of absence for further time off has been approved by the Department Manager/Supervisor. (Refer to Policy 107 Unpaid Leave of Absence).
2. Employment by another employer while on FML, except when prior approval has been obtained from the Director of Human Resources.
3. Falsification of records and failure to correct records known to be false (even if true when given).

### **RESERVATION OF RIGHTS**


JHHCG will comply with all legal requirements for providing family and medical leave to eligible employees. To the extent the law permits employer discretion, JHHCG hereby expressly reserves the right to modify, change or eliminate any provision of this policy with respect to any employee or group of employees and does not intend to create a contractual commitment to any employee through issuance of this policy.

### **RESPONSIBILITIES**

**Employee** Employee notifies manager of absence and/or requests Family Medical Leave (FML) with 30 days notice when leave is foreseeable. Requests signature of Manager on the “Request for Family and Medical Leave” form.

**Manager** Manager advises employee orally that absence may be counted as FML if it meets the criteria of the FMLA. If leave is due to surgery, may ask if it is elective or non-elective in order to determine whether leave must be immediate.

Verifies that employee is eligible for FML. (Checks length of service and

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hours worked.) Gives (or send via certified mail) the employee the Request for Family & Medical Leave ( Attachment B), the Certification by a Health Care Provider Forms (Attachment A) and Policy 107 - Unpaid Leave of Absence Form if applicable.

If leave is for employees own illness, and the illness lasts longer than 14 calendar days, the manager advises employee to obtain EHP Disability Claim Forms (Attachment C) from the Human Resources Department. The manager instructs employee to return the Request for Family & Medical Leave form to the manager for signature and the Certification By A Health Care Provider and Short-term Disability Forms to the Human Resources Department for review. The manager forwards the signed Request for Family & Medical Leave form to the Human Resources Department. The manager records FML time used in Kronos using the appropriate pay code.

**Human Resources,**

Human Resources responds to employee and managers questions, reviews the forms for accuracy and completion, coordinates approval process for STD and FML, and bills employee for continuation of benefits while on FML, if applicable..

**Occupational Health**

Occupational Health Services reviews all FML Certification By A Health Care Provider Form and related documentation. Calls Health Care Provider for authentication or clarification, if additional information is needed.

**Employee**

Begins Family & Medical Leave.  
 Communicates with manager while on FML as to status of leave, expected date of return and other job related matters.  
 Reports to the Occupational Health Department to be cleared for return to work if FML was for personal illness or injury.

**Occupational Health**


If FML was due to personal injury or illness, and return to work restrictions have been identified, Occupational Health evaluates and renders a decision as to if the employee may return to work. If so, completes a "Return to Duty" slip and gives it to the employee.

**Employee**

Returns to original or equivalent position and gives manager the "Return to Duty" slip.

***REFERENCE***

Federal Register, Department of Labor, Wage, and Hour Division; 29 CFR, Part 825: Family and Medical Leave Act of 1993 (FML).

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***SPONSOR***

Director of Human Resources.

***REVIEW CYCLE***

3 years