


Category:	Compensation and Benefits	INCA Community Services Personnel Policy 
Sub Category:	Leave Policies	
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Forms:	FMLA Application, EWS System	
Responsible: Supervisory Staff, Human Resource Director		

Family & Medical Leave Act (FMLA) Policy

Policy

INCA Community Services, Inc. is covered under the Family and Medical Leave Act (FMLA) of 1993 and provides FMLA to all eligible employees. The agency posts the mandatory FMLA Notices in all of the county offices and upon hire provides all new employees with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the FMLA.

Purpose

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

General Provisions

Under this policy, INCA will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered servicemember with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

Eligibility

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

- Work for INCA.
- Have worked for INCA for a total of at least 12 months or 52 weeks.
 - The 12 months or 52 weeks does not have to be consecutive.
 - Separate periods of employment will be counted, provided that the break in service does not exceed seven years.
 - Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break.

- For 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 a week or if the employee is on leave during the week.
- Worked at least 1,250 hours over the previous 12 months immediately preceding the commencement of the leave.
 - The 1,250 hours do not include time spent on paid or unpaid leave. Hours on leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.
- Work at a location where at least 50 employees are employed by INCA within 75 miles.

Type of Leave Covered

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

- The birth of a child and in order to care for that child.
- The placement of a child for adoption or foster care and to care for the newly placed child.
- To care for a spouse, child, or parent with a serious health condition.
- The serious health condition of the employee.
- To handle qualifying exigencies that arise because of active duty.
- To care for a family member who is a covered servicemember who received a serious injury or illness in the line of duty (up to 26 weeks).

Serious Health Condition Defined

A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed healthcare provider.

This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees with questions about what illnesses are covered under this FMLA policy or under the agency's sick leave policy are encouraged to consult with the Human Resource Director.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the agency may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

Qualifying Exigency Leave Defined

Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service.

The qualifying exigency must be one of the following:

- short-notice deployment
- military events and activities
- child care and school activities
- financial and legal arrangements
- counseling
- rest and recuperation
- post-deployment activities, and
- additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

Covered Servicemember

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

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 "son or daughter of a covered servicemember" means the covered servicemembers 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.
- A "parent of a covered servicemember" means a covered servicemembers 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."
- 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 March 27, 2015.
- The "next of kin of a covered servicemember" is the nearest blood relative, other than the covered service members 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 servicemembers 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 service members 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 servicemembers 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 servicemembers 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 Defined

- “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.
- 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.

Military Caregiver Leave or Covered Servicemember Leave

Leave is designated 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 service member.

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

The term “covered servicemember” means:

- 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
- 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:

- 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

- 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.
- 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.

Amount of Leave

An eligible employee can take up to 12 weeks for the FMLA circumstances listed below under this policy during any 12-month period:

- The birth of a child and in order to care for that child.
- The placement of a child for adoption or foster care and to care for the newly placed child.
- To care for a spouse, child, or parent with a serious health condition.
- The serious health condition of the employee.
- To handle qualifying exigencies that arise because of active duty.

The agency will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, the agency will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks of FMLA to care for a family member who is a covered servicemember who received a serious injury or illness in the line of duty during a single 12-month period. For this military caregiver leave, the agency will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

If spouses both work for the agency and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the spouses may only take a combined total of 12 weeks of leave. If spouses both work for the agency and each wishes to take leave to care for a covered injured or ill servicemember, the spouses may only take a combined total of 26 weeks of leave.

Employee Status and Benefits During Leave

While an employee is on leave, the agency will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the agency will require the employee to reimburse the agency the amount it paid for the employee's health insurance premium during the leave period.

Under current agency 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 Accounting Department by the 15th 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.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

Employee Status After Leave

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, 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 one which is virtually identical in terms of pay, benefits and working conditions. The agency may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

Use of Paid and Unpaid Leave

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid leave (annual and/or sick leave) prior to being eligible for unpaid leave. Sick leave may be run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave policy.

Disability leave for the birth of the 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. For example, if an employer provides six weeks of pregnancy disability leave, the six weeks will be designated as FMLA leave and counted toward the employee's 12-week entitlement. The employee may then be required to substitute accrued (or earned) paid leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement. An employee who is taking leave for the adoption or foster care of a child must use all annual leave prior to being eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid leave (annual and/or sick leave) prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid leave (annual and/or sick leave) (as long as the reason for the absence is covered by the agency's sick leave policy) prior to being eligible for unpaid leave.

Intermittent Leave or a Reduced Work Schedule

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or work day, resulting in a reduced hour schedule. In all cases,

the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill servicemember over a 12-month period).

The agency 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, the agency 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.

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 the agency 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.

Certification for the Employee's Serious Health Condition

The agency will require certification for the employee's serious health condition. The employee must respond to such a request 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. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition .

The agency may directly contact the employee's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator, or management official. The agency will not use the employee's direct supervisor for this contact. Before the agency makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the agency will obtain the employee's permission for clarification of individually identifiable health information.

The agency has the right to ask for a second opinion if it has reason to doubt the certification. The agency will pay for the employee to get a certification from a second doctor, which the agency will select. The agency may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the agency will require the opinion of a third doctor. The agency and the employee will mutually select the third doctor, and the agency 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.

Certification for the Family Member's Serious Health Condition

The agency will require certification for the family member's serious health condition. The employee must respond to such a request 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. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition .

The agency may directly contact the employee's family member's healthcare provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The agency will not use the employee's direct supervisor for this contact. Before the agency makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the agency will obtain the employee's family member's permission for clarification of individually identifiable health information.

The agency has the right to ask for a second opinion if it has reason to doubt the certification. The agency will pay for the employee's family member to get a certification from a second doctor, which the agency will select. The agency may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the agency will require the opinion of a third doctor. The agency and the employee will mutually select the third doctor, and the agency 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.

Certification of Qualifying Exigency for Military Family Leave

The agency will require certification of the qualifying exigency for military family leave. The employee must respond to such a request 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. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave .

Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave

The agency will require certification for the serious injury or illness of the covered servicemember. The employee must respond to such a request 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. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Servicemember.

Recertification

The agency may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the agency may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. The agency may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

Procedure for Requesting FMLA Leave

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the HR manager. Within five business days after the employee has provided this notice, the HR manager will complete and provide the employee with the DOL Notice of Eligibility and Rights.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the agency's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

Designation of FMLA Leave

Within five business days after the employee has submitted the appropriate certification form, the HR manager will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice.

Intent to Return to Work From FMLA Leave

On a basis that does not discriminate against employees on FMLA leave, the agency may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

Extended Medical Leave Terms and Conditions

If an employee's illness or injury requires a leave of absence for more than 12 weeks, the agency may, with satisfactory medical evidence, extend an employee's unpaid leave for an additional 8 weeks, or a total of 20 weeks in a 12-month rolling period. This will be determined on a case by case basis with the job duties and responsibilities taken into consideration as to whether the agency can substantially support the position without cause or loss of production.

Key employees may be asked to step down from their position in the event the agency cannot provide adequate coverage for the position during the time of leave. The company extends the employee's reinstatement rights through the end of the 20-week period, if the employee can continue to perform the job with or without reasonable accommodation.

The employee will be responsible for the total cost of the health insurance premiums on any health insurance coverage the employee or the employee's family receives through the agency during the extended leave period, unless otherwise provided by law. Employees will not accrue annual, sick or holidays while on extended leave.

While on extended leave, employees are required to report periodically to their supervisor, at least weekly, regarding the status of their medical condition and their intent to return to work. Employees may be required to provide satisfactory medical evidence substantiating their need for continued leave.

If an employee is unable to return to either his or her job or an unfilled position that he or she is qualified for and capable of performing, because of illness or injury the employee may be separated from employment.

Dissemination of Policy

The policy will be made available to all employees through the agency's website. The agency will educate and train employees and supervisors regarding the policy and any conduct that could constitute a violation of the policy.